EXAMINATION
OF THE
DRED SCOTT CASE
BY
THOMAS H. BENTON

1501

HISTORICAL AND LEGAL

EXAMINATION

OF THAT PART OF THE

DECISION OF THE SUPREME COURT OF THE UNITED STATES

IN THE

DRED SCOTT CASE,

WHICH DECLARES THE

UNCONSTITUTIONALITY OF THE MISSOURI COMPROMISE ACT, AND THE SELF-EXTENSION OF THE CONSTITUTION TO TERRITORIES, CARRYING SLAVERY ALONG WITH IT.

With an Appendix,

CONTAINING:

I. The Debates in the Senate in March, 1849, between Mr. Webster and Mr. Calhoun, on the Legislative Extension of the Constitution to Territories, as contained in Vol. II. Ch. CLXXXII. of the "Thirty Years' View."

II. The Inside View of the Southern Sentiment, in relation to the Wilmot Proviso, as seen in Vol. II. Ch. CLXVIII. of the "Thirty Years' View."

III. Review of President Pierce's Annual Message to Congress of December, 1856, so far as it relates to the Abrogation of the Missouri Compromise Act and the Classification of Parties.

BY THE

AUTHOR OF THE "THIRTY YEARS' VIEW."

NEW YORK:
D. APPLETON AND COMPANY,
346 & 348 BROADWAY, NEW YORK.
1858.

INTRODUCTORY NOTE.

The title is an index to the character of this Examination, which only goes to the two points mentioned; and goes to them because they are held to be political, affecting Congress in its legislative capacity, and on which the Supreme Court has no right to bind, or control that body: as heretofore seen in the case of the Bank of the United States, the Sedition law, &c.; cases in which Congress followed its own opinion of its own powers, regardless of the Court's decision; and the Court had no way to compel it to obedience, or to punish it for contempt.

Congress holds its powers from the Constitution, where every grant of authority is preceded by the words—"*Shall have power to:*" and to the support of which the members are sworn. The grant of power is from the Constitution, and the oath is to the Constitution; and it is written, that its words, always the same, may be always seen, and no excuse for disregarding them. The duty of the member—his allegiance—his fealty—is to the Constitution; and in performance of this duty—in the discharge of this allegiance—in the keeping of this fealty—he must be governed by the words of the instrument, and by the dictates of his conscience. The member may enlighten himself, and should, with the counsels of others: but as authority—as a rule of obligation—as a guide to conduct—the Constitution and the oath alone can govern; and were it otherwise—was Congress to look to judicial interpretation for its powers—it would soon cease to have any fixed rules to go by: would soon have as many diverse interpretations as different courts: and the Constitution itself, like the Holy Scriptures, in the hands of councils and commentators, would soon cease to be what its framers made it.

The power of the Court is judicial—so declared in the Constitution; and so held in theory, if not in practice. It is limited to cases "*in law and equity;*"* and though sometimes encroaching upon political subjects, it is without right, without authority, and without the means of enforcing its decisions. It can issue no mandamus to Congress, or the people, nor punish them for disregarding its decisions, or even attacking them. Far from being bound by their decisions, Congress may proceed criminally against the judges for making them, when deemed criminally wrong—one house impeach and the other try: as done in the famous case of Judge Chase.

In assuming to decide these questions,—(Constitutionality of the Missouri Compromise, and the self-extension of the Constitution to Territories,)—it is believed the Court committed two great errors: *first*, in the assumption to try such questions: *secondly*, in deciding them as they did. And it is certain that the decisions are contrary to the uniform action of all the departments of the government—one of them for thirty-six years; and the other for seventy years; and in their effects upon each are equivalent to an alteration of the Constitution,† by insert-

* The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, &c.—*Article III., Sec.* 2.

† "The question here is, whether they (the arguments referred to) are sufficient to authorize this Court to insert into this clause of the Constitution an exception of the exclusion or allowance of slavery, not found therein, nor in any other part of that instrument. To ingraft on any instrument a substantive exception not found in it, must be admitted to be a matter attended with great difficulty. And the difficulty increases with the importance of the instrument, and the magnitude and complexity of the interests involved in its construction. To allow this to be done with the Constitution, upon reasons purely political, renders its judicial interpretation impossible—because judicial tribunals, as such, cannot decide upon political considerations. Political reasons have not the requisite certainty to afford rules of juridical interpretation. They are different in different men. They are different in the same men at different times. And when a strict interpretation of the Constitution, according to the fixed rules which govern the interpretation of laws, is abandoned, and the theoretical opinions of individuals are allowed to control its meaning, we have no longer a Constitution; we are under the government of individual men, who for the time being have power to declare what the Constitution is, according to their own views of what it ought to mean. When such a method of interpretation of the Constitution obtains, in place of a republican Government, with limited and defined powers, we have a Government which is merely an exponent of the will of Congress; or what, in my opinion, would not be preferable, an exponent of the individual political opinions of the members of this Court."—*Mr. Justice Curtis.*

ing new clauses in it, which could not have been put in it at the time that instrument was made, nor at any time since, nor now.

The Missouri Compromise act was a "*political enactment*," made by the political power, for reasons founded in national policy, enlarged and liberal, of which it was the proper judge: and which was not to be reversed afterwards by judicial interpretation of words and phrases.

Doubtless the Court was actuated by the most laudable motives in undertaking, while settling an individual controversy, to pass from the private rights of an individual to the public rights of the whole body of the people; and, in endeavoring to settle, by a judicial decision, a political question which engrosses and distracts the country:* but the undertaking was beyond its competency, both legally and potentially. It had no right to decide—no means to enforce the decision—no machinery to carry it into effect—no penalties of fines or jails to enforce it: and the event has corresponded with these inabilities. Far from settling the question, the opinion itself has become a new question, more virulent than the former! has become the very watchword of parties! has gone into party creeds and platforms—bringing the Court itself into the political field—and condemning all future appointments of federal judges, (and the elections of those who make the appointments, and of those who can multiply judges by creating new districts and circuits,) to the test of these decisions. This being the case, and the evil now actually upon us, there is no resource but to face it—to face this new question—examine its foundations—show its errors; and rely upon reason and intelligence to work out a safe deliverance for the country.

Repulsing jurisdiction of the original case, and dismissing it for want of right to try it, there would certainly be a difficulty in getting at its merits—at the merits of the dismissed case itself; and, certainly, still greater difficulty in getting at the merits of two great political questions which lie so far beyond it. The Court evidently felt this difficulty, and worked sedu-

* "The case involves private rights of value, and Constitutional principles of the highest importance, about which there has become such a difference of opinion that the peace and harmony of the country required the settlement of them by a judicial decision."—*Mr. Justice Wayne.*

lously to surmount it—sedulously, at building the bridge, long and slender—upon which the majority of the judges crossed the wide and deep gulf which separated the personal rights of Dred Scott and his family from the political institutions and the political rights of the whole body of the American people. They did their work to their satisfaction, and it is right they should have the benefit of it in their own words: which are here accordingly given:

"The principle of law is too well settled to be disputed, that a court can give no judgment for either party, where it has no jurisdiction; and if, upon the showing of Scott himself, it appeared that he was still a slave, the case ought to have been dismissed, and the judgment against him and in favor of the defendant for costs, is, like that on the plea in abatement, erroneous, and the suit ought to have been dismissed by the Circuit Court for want of jurisdiction in that Court.

"But, before we proceed to examine this part of the case, it may be proper to notice an objection taken to the judicial authority of this Court to decide it; and it has been said that, as this court has decided against the jurisdiction of the Circuit Court on the plea in abatement, it has no right to examine any question presented by the exception; and that any thing it may say upon that part of the case will be extra-judicial, and mere *obiter dicta*.

"This is a manifest mistake; there can be no doubt as to the jurisdiction of this court to revise the judgment of a circuit court, and to reverse it for any error apparent on the record, whether it be the error of giving judgment in a case over which it had no jurisdiction, or any other material error; and this, too, whether there is a plea in abatement or not.

"The correction of one error in the Court below does not deprive the appellate court of the power of examining further into the record, and correcting any other material errors which may have been committed by the inferior Court. There is certainly no rule of law—nor any practice—nor any decision of a court—which even questions this power in the appellate tribunal. On the contrary, it is the daily practice of this Court, and of all appellate Courts where they reverse the judgment of an inferior court for error, to correct by its opinions whatever errors may appear on the record material to the case; and they have always held it to be their duty to do so where the silence of the court might lead to misconstruction or future controversy, and the point has been relied on by either side, and argued before the Court."

This is the justification for going into the merits of the Scott case after deciding there was no right to try it: (for the want of jurisdiction is the want of a right to try, or even to examine a case:) and the strength of this justification, compressed into a few words, seems to be, that the Supreme Court, in its appellate character, has a right, in reviewing judgments at common law, to go beyond the errors on which the appeal was taken, and search for other errors in the record: and correct all that can be discovered. Without impugning this practice in the least—admitting its entire correctness in cases where the reason for it applies—it is believed that the reason for the practice had no application in this case: that, far from applying, it was absolutely forbidden by the reason on which it was founded. That reason is, that a return of the record to the Court below with errors in it, would be a silent sanction of those errors—would cause them to be repeated by the court below, and give parties the delay and cost of another appeal; and the Supreme Court the trouble and care of a new decision. But that delay, and cost and trouble, can only be where the case is remanded for retrial, and never when it is remanded to be dismissed for want of jurisdiction. In this latter case there is no danger of a repetition of the error. In the case of such dismission there is nothing further for the Court below to do—no repetition of error for it to commit—no future trouble to be given to the Court above—nor any future cost or delay to the parties. Tested by its reason, and this rule of practice could not obtain in the Dred Scott case: tested by actual practice, if a case in point—(dismission for want of jurisdiction, and still a correction of all discoverable errors)—can be found, and it is believed the rule will fail in this case as completely for want of precedent as for want of reason. In this case, the suit was dismissed for want of jurisdiction, and that in the first step of the plaintiff in getting into court.* He was turned back from the door, for want of a right to enter the court room—debarred from suing, for want of citi-

* "Upon the whole, therefore, it is the judgment of this Court, that it appears by the record before us that the plaintiff in error is not a citizen of Missouri, in the same sense in which that word is used in the Constitution; and that the Circuit Court of the United States, for that reason, had no jurisdiction in the case, and could give no judgment in it. Its judgment for the defendant must, consequently, be reversed, and a mandate issued, directing the suit to be dismissed for want of jurisdiction."—*Opinion of the Court.*

zenship; after which it would seem to be a grave judicial solecism to proceed to try the man when he was not before the Court, and when he could take nothing from its decision if the merits had all been found in his favor.

These remarks are made without reference to Scott, or to any injury, real or supposed, which might concern him: they are made wholly in relation to the two great political questions which I handle, and to show that the Court had no jurisdiction of them—no legal way to get at them—no foundation to stand upon in concatenating that chain bridge of slender links on which the Court crossed from Scott and his family, and their claim to personal freedom, to the whole people of the United States, and their political government. It was by going into the merits of the Scott case, that the Court got hold of the Constitution and the Missouri Compromise; and I think, with Mr. Justice Curtis, in his dissenting opinion,* that so grave an inquiry, going to the foundations of our government, ought not to be got hold of in that incidental, subaltern, and contingent way. Even if there had been jurisdiction in the Scott case, and the Court had got fairly at that case, I cannot consent that so momentous political questions should have been hung on to it, and tried as appendant, and been saved, or condemned, as a mere consequence of the decision of the question of personal freedom to Dred Scott, his wife and children. Such parties as the Congress and the people, their Constitution and its administration, are certainly of sufficient dignity to have a trial of their own, and to be present at it by their counsel. Who was counsel for these parties on that trial of Scott and his family? Nobody! for the

* "I regret I must go further, and dissent both from what I deem their assumption of authority to examine the constitutionality of the act of Congress commonly called the Missouri Compromise Act, and the grounds and conclusions announced in their opinion.

"Having first decided that they were bound to consider the sufficiency of the plea to the jurisdiction of the Circuit Court, and having decided that this plea showed that the Circuit Court had not jurisdiction, and consequently that this is a case to which the judicial power of the United States does not extend, they have gone on to examine the merits of the case as they appeared on the trial before the Court and jury, on the issues joined on the pleas in bar, and so have reached the question of the power of Congress to pass the act of 1820. On so grave a subject as this, I feel obliged to say that, in my opinion, such an exertion of judicial power transcends the limits of the authority of the Court, as described by its repeated decisions, and, as I understand, acknowledged in this opinion of the majority of the Court."—*Mr. Justice Curtis.*

very respectable counsel who appeared were the counsel of Scott; and their business was to save Scott! save him as the primary object! leaving the safety of the other parties for a secondary object, and a mere resulting consequence.

What makes this assumption of authority the more regretable, is the perfect immateriality to the parties, (Scott and his master,) as declared by the Court, of the consequences of terminating the case, either by dismission for want of jurisdiction, or by judgment on the merits for the defendant—both modes of terminating it being about the same, (as declared by the Court,)* in its consequences to each party, personally and pecuniarily. Now, when the consequences either way would have been so immaterial to the parties to the suit—to Scott and to Sanford—why take the course which has been so serious to our Constitution? so contrary to seventy years' action of our government? so inflammatory to political parties? and so aggravating to the spirit of sectional division?

But there is another view to be taken of this point—(the Court's assumption of jurisdiction over the Constitution and the compromise)—which shows that, according to the opinion of the Court itself, there was no necessity, in deciding upon the question of freedom or slavery to Scott and his family, to decide upon the constitutionality of the Missouri Compromise Act. That view of the case is this: that it was a case of two aspects,—one, that of Scott alone; the other, that of himself and family together; in fact, two different cases, in one of which Scott stood alone, and in the other he and his family stood together. Thus, before he had a family, Scott had been carried by his owner from Missouri into the State of Illinois, where the ordinance of '87 against slavery was admitted by the Court to be in full force; but which residence in a free State gave him no freedom, because being brought back to the State of Missouri, his condition depended upon the laws of Missouri, and not of

* "It is true that the result either way, by a dismissal or by a judgment for the defendant, makes very little, if any, difference in a pecuniary or personal point of view to either party. But the fact that the result would be very nearly the same to the parties in either form of judgment, would not justify this Court in sanctioning an error in the judgment which is patent on the record, and which, if sanctioned, might be drawn into precedent, and lead to serious mischief and injustice in some future suit."—*Opinion of the Court.*

Illinois.* Upon the same principle, Scott and his whole family having been taken back to Missouri from the north side of the compromise line, would have their free or servile condition determined by the laws of the State to which they were returned, and not by those of the Territory in which they had sojourned. So that, free soil or slave soil north of 36° 30′, made no difference to the sojourning slaves brought back. And in this part of the case the Court says: "As Scott was a slave when taken into the State of Illinois by his owner, and was there held as such, and brought back in that character, his *status*, as free or slave, depended on the laws of Missouri, not of Illinois." So that, to the decision of the question of freedom or slavery to Scott and his family, the validity or immateriality of the Missouri Compromise Act was wholly immaterial, and entirely unnecessary to be determined. I say nothing about this as law: I take it as I find it in the pronounced opinion of the Supreme Court;† and so taking it as the Court's own law, I must be allowed to

* "But there is another point in the case which depends on the State power and State law. And it is contended, on the part of the plaintiff, that he is made free by being taken to Rock Island, in the State of Illinois, independently of his residence in the territory of the United States; and being so made free, he was not again reduced to a state of slavery by being brought back to Missouri. Our notice of this part of the case will be very brief; for the principle on which it depends was decided in this Court, upon much consideration, in the case of Strader et al. *v.* Graham, reported in 10th Howard, 82. In that case, the slaves had been taken from Kentucky to Ohio, with the consent of the owner, and afterwards brought back to Kentucky. And this Court held that their *status* or condition, as free or slave, depended upon the laws of Kentucky, when they were brought back into that State, and not of Ohio; and that this Court had no jurisdiction to revise the judgment of a State court upon its own laws. This was the point directly before the Court, and the decision that this Court had not jurisdiction turned upon it, as will be seen by the report of the case. As Scott was a slave when taken into the State of Illinois by his owner, and was there held as such, and brought back in that character, his *status*, as free or slave, depended on the laws of Missouri, and not of Illinois."—*Opinion of the Court.*

† For my opinion of the law I am willing to take it as declared by Mr. Chief Justice Gamble, of the Missouri Supreme Court, in a long course of decisions at times when the question had not become partisan, political and geographical, and when there were no new lights suddenly breaking out to throw all past wisdom in the shade. But to Judge Gamble's opinion:—"I regard the question as conclusively settled by repeated adjudications of this Court; and if I doubted or denied the propriety of those decisions, I would not feel myself any more at liberty to overturn them, than I would any other series of decisions by which the law upon any other question had been settled. There is with me nothing in the law of slavery which distinguishes it from the law on any other subject, or allows any more accommodation to the temporary excitements which

believe that, in no possible aspect of the Scott case, even in a trial on the merits, and with clear jurisdiction, was there the least necessity to judge the Compromise Act and the Constitution: consequently, that the act of the Court in judging them was unnecessary and extra-judicial. So that the decision of the Court seems to be open to the preliminary objections of assuming jurisdiction where it had none—hunting for errors by virtue of a rule which did not apply—making a bridge to get from a case of personal rights to a question of political power—and acting, without necessity, in a case of no consequence to the parties, on a different case dreadfully momentous to the public.

This is the exposition of the first great error of the Court, as I hold it, in the part of its opinion which I propose to examine: the error of assuming without right, and without necessity, to decide upon the constitutionality of the Missouri Compromise Act, and the self-extension of the Constitution to territories. The second great error is in the decision itself upon these questions. I propose to examine these decisions; and in doing so, limit myself, as the Court did, to the strict legal inquiry which the subject exacts. I shall not go beyond this limit—although as a political subject entirely appropriate to do so—to inquire into the origin and design of the course of measures which have produced the present disturbance in the Union, and in the attempt to compose which by a judicial decision the Court overrules the action of two generations, virtually inserts a new clause in the Constitution, changes its character, and makes a new point of departure in the working of the Federal Government. That task belongs to history, veracious and fearless, and will require a chapter of its own in the annals of our Union.

The Court sets out with a fundamental mistake, which pervades its entire opinion, and is the parent of its portentous

---

have gathered around it. * * * * * But in the midst of all such excitement, it is proper that the judicial mind, calm and self-balanced, should adhere to principles established when there was no feeling to disturb the view of the legal questions upon which the rights of parties depend. In this State it has been recognized from the beginning of the Government as a correct position in law, that the master who takes his slave to reside in a State or Territory, where slavery is prohibited, thereby emancipates his slave." (Winney *v.* Whitesides, 1 Mo. 473; Le Grange *v.* Chouteau, 2 Mo. 20; Milley *v.* Smith, Ib. 36; Ralph *v.* Duncan, 3 Mo. 194; Julia *v.* McKinney, Ib. 270; Nat *v.* Ruddle, Ib. 400; Rachel *v.* Walker, 4 Mo., 350, Wilson *v.* Melvin, 592.)—*Chief Justice Gamble, Missouri Supreme Court.*

errors. That mistake is in the assumption, that the Constitution extends to Territories as well as to States, and includes these infant settlements in the provisions made for sovereign States. Well do I remember the day—and if I had forgotten it, parliamentary history would preserve its memory—when a view of that doctrine was first revealed* to the astonished vision of the American Senate. It was in the last days of the Session 1848–'49, and in an unparliamentary attempt to hitch on to the General Appropriation Bill, which had come up from the House, the defeated bills (three made into one) for giving territorial governments to California, New Mexico, and Utah. These territories had remained without governments for nearly two years—all attempts at legislating for them being baffled, *first*, by the movement of Mr. Wilmot to prohibit the introduction of slavery, (defeated because the prohibition was already complete under the Mexican laws,)—and, *next*, by the movements of Mr. Calhoun to carry slavery there. It was an injury to these territories, a reproach upon our Government, and a humiliation to Congress, to remain in this state of impassibility with respect to the government of the new acquisitions. But the power of Congress

* "*First revealed:*" for it had been there once before, without a revelation of itself. It was the session before, in one of the many abortive bills for giving governments to these territories, reported from a committee specially appointed for the purpose, composed of Mr. Calhoun and a majority of his immediate friends and sympathizers on the slavery subject. It was a conglomerate bill which lumped all the territories together—even Oregon. It was an enormously long bill of three dozen ponderous sections, the penultimate one of which, namely, the 35th, was in these words: "The Constitution and the laws of the United States are hereby extended over and declared to be in full force in said territories of New Mexico and California, so far as the same, or any provision thereof, may be applicable."—This comprehensive section, the only short one in the bill, but so new and startling, was relegated to its fag-end, where nothing but details of form are ever found—details to carry out principles contained in the front sections, and upon which alone the bill is debated—and seems to have escaped all notice at the time. No speaker mentioned it, and there were many able jurists who spoke on the bill—among others, Mr. Webster. No one hinted at it—a persuasive evidence that no one knew of it but those who put it there, and who had the same reason for not referring to it that they would have for putting it where it would not be seen. Mr. Benton voted for the bill without knowing such a provision was in it—nor did he know of it until long after.—This bill did not become law, and has passed into the receptacle of things forgotten, but its remembrance may be of some value now in showing that, on that day, (July 22d, 1848,) the authors of that bill deemed an act of Congress necessary to carry the Constitution into a territory, and give it force therein the same as statutes of Congresss—and so classed it with the statutes to be extended.

was paralyzed by the pertinacity of two extremes, which, operating from opposite points, and with mutual crimination of each other, worked to the same effect in baffling Congress, and co-operated in producing the same results while denouncing each other's means—each extreme a minority, and unable to do anything of itself, but potent enough in conjoint action to prevent Congress from doing any thing. A succession of bills introduced during three Sessions to give governments to these orphan territories, had each been defeated; and now Congress was at the end of its Session, and at the end of the Administration which acquired the territories, and a recess of nine months in view; and the same abortive result to the territorial bills. In this extreme moment, the civil and diplomatic bill, commonly called the General Appropriation Bill—the one on which the life of the Government depended, and to which nothing extraneous could be added—came up from the House, matured by that body, and only waiting the action of the Senate upon it. The Senate had acted—had made the appropriate additions germane to the bill—had finished the bill, and was on the point of returning it to the House, when Mr. Isaac P. Walker, of Wisconsin, moved to amend it by adding to it a lumping bill for the government of the three territories. The proposition fixed no attention, and seemed to excite no concern, being considered unsustainable on a question of order, until it took a sudden and sharp turn into the epidemic slavery question. For, it seemed to be with the mind in those days as it was with the body in the time of the great plague in Athens during the "Thirty Years' War," when the historian Thucydides says—That whatever disease a man had before, or might take during the time, no matter what, it immediataly ran into the plague, and took the form of that pestilence, entirely losing its own milder character in the virulence of the prevailing distemper: so, in the mental malady of our slavery agitation, all questions in Congress immediately ran into that malady, and took the form of the slavery question. So of this proposed amendment of Mr. Walker. It had nothing to do with slavery, and no affinity to the Appropriation Bill; and, left to itself, would have been quickly disposed of—either ruled out as disorderly, or rejected as objectionable. But its nature was wholly altered after he had first presented it. At that first presentation it contained a section, as does every territorial

government bill, extending certain enumerated acts of Congress to the territories—such acts as Congress thinks proper to extend —no act of Congress obtaining force in a territory, unless expressly spread over it. Mr. Walker's bill conformed to this practice. It contained the usual list of acts which were suitable to territories; for the list is nearly always the same.

Nothing was done upon this proposition the day it was offered. It remained unacted upon during that day. The next day Mr. Walker asked the leave of the Senate to modify his amendment, at the request of a friend, as he said. Leave was given, and the modification made in open Senate, and consisted of heading the list of the enumerated acts of Congress, with the Constitution: so as to make the list read, "*The Constitution of the United States, and all and singular the several acts of Congress (describing them) be, and the same hereby, are extended over and given full force and efficacy in the said territories.*" The novelty and strangeness of this proposition called up Mr. Webster, who repulsed as an absurdity, and as an impossibility, the scheme of extending the Constitution to territories—declaring that instrument to have been made for States, not territories—that Congress governed the territories independently of the Constitution, and incompatibly with it—that no part of it went to a territory but what Congress chose to send—that it could not act of itself anywhere, not even in the States for which it was made: and that it required an act of Congress to put it into operation before it had effect anywhere.* This was clear constitutional law, shown in the preamble to the Constitution, and in every word of it, that it was made for States—so understood

* But this is a case in which Mr. Webster should have his own words—at least a few of them; and here they are: "Let me say, that in this general sense there is no such thing as extending the Constitution. The Constitution is extended over the United States, and nothing else. It cannot be extended over any thing, except the old States and the new States that shall come in hereafter, when they do come in. There is a want of accuracy of ideas in this respect that is quite remarkable, among eminent gentlemen, *and especially professional and judicial gentlemen.** It seems to be taken for granted that the right of trial by jury, the *habeas corpus*, and every principle designed to protect personal liberty, is extended by force of the Constitution itself over every new Territory. That proposition cannot be maintained at all. How do you arrive at it by any reasoning or deduction? It can only be arrived at by the loosest of all possible constructions. It is said that this must be so, else the right of *habeas*

* Stick a pin here. Mr. Webster points out lawyers and judges as being specially befogged on this point. Nothing but a sense of painful duty could have carried Mr. W. out of his way to make such a remark of a profession of which he was himself the highest ornament, and of the ermine which he so much reverenced.

in the legislation of seventy years—every part of it requiring a specific law to execute it before it could be enforced. Even the oath commanded by the Constitution could not be taken until an act of Congress was passed to prescribe the mode, and that act was No. 1 of the acts of the first Congress, and required the members who made it, (and who had been sworn in by a voluntary resolution for the purpose of making it,) to be sworn in under it immediately; and all other officers as soon as appointed. So of every other clause of the Constitution, no matter how plain or peremptory the provision. Nothing could be done under it without a law, as in the case of fugitives from service or

---

corpus would be lost. Undoubtedly, these rights must be conferred by law before they can be enjoyed in a Territory."—*Webster, March 3d*, 1849.

To the same effect Mr. Clay, when he first heard of this new doctrine, which was near the end of his natural as well of his parliamentary life:

"Now, really, I must say that the idea that *eo instanti* upon the consummation of the treaty, the Constitution of the United States spread itself over the acquired territory, and carried along with it the institution of slavery, is so irreconcilable with any comprehension, or any reason that I possess, that I hardly know how to meet it. Why, sir, these United States consist of thirty States. In fifteen of them there is slavery: in fifteen slavery does not exist. How can it be argued that the fifteen slave States, by the operation of the Constitution of the United States, carried into the ceded country their institution of slavery, any more than it can be argued upon the other side, that by the operation of the same Constitution the fifteen free States carried into the ceded Territories the principle of freedom, which they, from views of public policy, have chosen to adopt within their limits? Let me suppose a case. Let me imagine that Mexico had never abolished slavery there at all. Let me suppose that it was existing there, by virtue of law, from the shores of the Pacific to those of the Gulf of Mexico, at the moment of the cession of those countries to us by the treaty in question. With what patience would gentlemen, coming from the slaveholding States, listen to an argument which should be urged by the free States, that, notwithstanding the existence of slavery within these territories, the Constitution of the United States, the moment it operated upon and took effect within the ceded Territories, abolished slavery and rendered them free? Well, is there not just as much ground to contend, where a moiety of the States are free, and the other moiety are slaveholding States, that the principle of freedom which prevails in the one class shall operate, as the principle of slavery, which operates in the other class of States, shall operate? Can you, amidst this conflict of interests, of principles, and of legislation which prevails in the two parts of the Union—can you come to any other conclusion than that which I understand to be the conclusion of the public law of the world, of reason, and of justice, that the *status* of law, as it existed at the moment of the conquest, or acquisition, remains unchanged, until it is altered by the sovereign authority of the conquering or acquiring power? The laws of Mexico, as they existed at the moment of the cession of the ceded territories to this country, remained their laws still, unless they were altered by that new sovereign power under which this people and these territories came, in consequence of the treaty of cession, to the United States.—*Mr. Clay on Compromise Measures*, 1850.

justice: none of whom could be delivered up except in pursuance to a law made to carry the clause into effect. Knowing the impossibility of self-action on the part of the Constitution—a mere declaration of principles without vitality until germinated by law—Mr. Webster scouted as an impossible absurdity, the extension of the Constitution to territories. Mr. Calhoun replied, and immediately became the prominent speaker on the extension side—contending that the Constitution could be so extended, and, being the supreme law of the land, would carry along with it protection to persons and property, *to wit*, the owner and his slaves; and would override and control all laws opposed to that protection. The debate then took the regular slavery form, and developed this new question which had been feeling its way in some remarks, but never before took the shape of a formal proposition to be enacted into law—that of extending slavery into the new territories. Mr. Calhoun boldly avowed his intent to carry slavery into them under the wing of the Constitution, and denounced as enemies to the South all who opposed it. Mr. Webster rejoined, going into an extended argument in support of his positions. Several senators joined in it, and the whole debate may be seen in the Appendix to the Congress Debates of the day. A brief notice of it, with parts of Mr. Webster's and Mr. Calhoun's speeches, may be seen in the Thirty Years' View, (vol. 2, ch. 182,) and also in the Appendix to this Examination of the Court's Opinion.

The amendment was carried, the whole Territorial Bill of Mr. Walker, as modified at the instance of a friend; and being returned to the House for its concurrence, the amendment was rejected, and a contest was brought on between the two Houses, which threatened the loss of the General Appropriation Bill, and the consequent stoppage of the government for the want of the means of keeping it alive. It was after midnight, and the last night not only of the session but of the Congress, and of the presidential term; and when many Senators had retired, or refused to vote, believing their power was at an end. Mr. Polk, who, according to the custom of the presidents, had remained in the capitol until midnight to sign bills, had left it and gone home; the House had ceased to do business, was without a quorum, and had sent to the Senate the customary adjournment message. One-third of the Senate was absent, or refusing to

vote, Mr. Cass and Mr. Benton among the latter. The motion was made to adjourn *sine die*, which, under the imminent circumstances of the occasion, the presiding officer refused to put. It was after four o'clock in the morning of the 4th of March when this contest was brought to an end by the recession of the Senate—by the Senate receding from its amendment—and the General Appropriation Bill (the life of the government) permitted to pass.* It was passed on the morning of the 4th of March, and signed by the President on that day, but antedated of the third to prevent the invalidity from appearing on its face. Such were the portentous circumstances under which this new doctrine first revealed itself in the American Senate! and then as needing a legislative sanction, as requiring an act of Congress to carry the Constitution into the territories, and to give it force and efficacy there. Failing in that attempt, the higher ground was afterwards taken, that the Constitution went of itself, and enforced itself in these territories, so far as slavery is concerned: and this, I apprehend, is what the Supreme Court has decided.

This being the decision of the Court, it becomes proper to give it in their own words, thus:

"This Territory being a part of the United States, the Government and the citizen both enter it under the authority of the Constitution, with their respective rights defined and marked out; and the Federal Government can exercise no power over his person or property, beyond what that instrument confers, nor lawfully deny any right which it has reserved.

"It seems, however, to be supposed, that there is a difference between property in a slave and other property, and that different rules may be applied to it in expounding the Constitution of the United States. And the laws and usages of nations, and the writings of eminent jurists upon the relation of master and slave and their mutual rights and duties, and the powers which Governments may exercise over it, have been dwelt upon in the argument.

"Now, as we have already said in an earlier part of this opinion, upon a different point, the right of property in a slave is distinctly and expressly affirmed in the Constitution. The right to traffic in it, like

* Only seven Senators voted against receding, Mr. Calhoun himself not voting in this last struggle—for what reason not stated. It is due to Mr. Webster to say, that his skill and perseverance passed this bill, and prevented the Government from being stopped until a new Congress could be assembled, of which a considerable number of members were yet to be elected.

an ordinary article of merchandise and property, was guaranteed to the citizens of the United States, in every state that might desire it, for twenty years. And the Government in express terms is pledged to protect it in all future time, if the slave escapes from his owner. This is done in plain words—too plain to be misunderstood. And no word can be found in the Constitution which gives Congress a greater power over slave property, or which entitles property of that kind to less protection than property of any other description. The only power conferred is the power coupled with the duty of guarding and protecting the owner in his rights.

"Upon these considerations, it is the opinion of the Court, that the act of Congress which prohibited a citizen from holding and owning property of this kind in the Territory of the United States north of the line therein mentioned, is not warranted by the Constitution, and is therefore void; and that neither Dred Scott himself, nor any of his family, were made free by being carried into this Territory; even if they had been carried there by the owner, with the intention of becoming a permanent resident." *

---

* This opinion of the Court, and the reasons given for it, correspond with the following resolutions submitted by Mr. Calhoun in the Senate (February, 1847):

"*Resolved*, That the Territories of the United States belong to the several States composing this Union, and are held by them as their joint and common property.

"*Resolved*, That Congress, as the joint agent and representative of the States of the Union, has no right to make any law or do any act whatever that shall directly, or by its effects, make any discrimination between the States of this Union, by which any one of them shall be deprived of its full and equal rights in any Territory of the United States acquired or to be acquired.

"*Resolved*, That the enactment of any law which should directly, or by its effects, deprive the citizens of any of the States of this Union from emigrating, with their property, into any of the Territories of the United States, would make such a discrimination; and would, therefore, be a violation of the Constitution, and the rights of the States from which such citizens emigrated, and in derogation of that perfect equality which belongs to them as members of this Union, and would tend directly to subvert the Union itself."

These resolutions were in response to the Wilmot proviso; and the sincerity of their author in offering them has been since shown, in a confidential letter which has come to light, in which this proviso, thus presented to the Senate to be adopted as adequate cause for dissolving the Union, was considered by Mr. Calhoun as a God-send, absolutely necessary, or something like it, to keep up the slavery agitation in the South; and, of which any compromise, adjustment, or even its defeat, would be unfortunate for the South.—*See Appendix II.*—These resolutions were never brought to a vote in the Senate. They were denounced upon the spot as a "*fire-brand*," and suffered to die out there, but sent to the slave States for adoption; by a few of which (Virginia, South Carolina, Florida, and Missouri) they were legislatively adopted, and became the basis of new party organization.

It is believed that these positions are based upon errors of fact, which being corrected, the erroneous deductions fall of themselves. The prohibition of slavery in a Territory is assumed to work an inequality in the States, allowing one part to carry its property with it—the other, not. This is a mistake—a great error of fact—the source of great errors of deduction. The citizens of all the States, free and slave, are precisely equal in their capacity to carry their property with them into Territories. Each may carry whatever is property by the laws of nature: neither can carry that which is only property by statute law: and the reason is, because he cannot carry with him the law which makes it property. Either may carry the thing which is the subject of this local property, but neither can carry the law which makes it so. The Virginian may carry his man slave; but he cannot carry the Virginian law which makes him a slave. The citizen of Massachusetts may carry the pile of money which, under a State law, constitutes a bank; but he cannot carry the law or charter which makes it a bank: and his treasure is only a pile of money; and, besides being impossible, it would be absurd, and confusion confounded to be otherwise. For, if the citizen of one State might carry his slave State law with him into a Territory, the citizens of every other slave State might do the same; and then what Babylonish confusion, not merely of tongues, but of laws, would be found there! Fifteen different codes, as the slave States now number, and more to come. For every slave State has a servile code of its own, differing from others in some respects—and, in some, radically: as much so as land, in the eye of the law, differs from cattle. Thus, in some States, as in Virginia, and others, slaves are only chattels: in others, as in Kentucky and Louisiana, they are real estate. How would all these codes work together in a Territory under the wing of the Constitution, protecting all equally? no law of Congress there, or of the Territory, to reconcile and harmonize them by forming them into one; no law to put the protecting power of the Constitution into action; but of itself, by its own proper vigor, it is to give general and equal protection to all slaveholders in the enjoyment of their property—each, according to the law of the State from which he came. For, there being no power in Congress, or the Territorial Legislature, to legislate upon slavery, the whole subject is left to the Constitution and the State law!

that law which cannot cross the State line! and that Constitution which gives protection to slave property but in one instance, and that only in States, not in Territories—the single instance of recovering runaways. The Constitution protect slave property in a Territory! when by that instrument a runaway from the Territory or into the Territory, cannot be reclaimed. Beautiful Constitutional protection that! only one clause under it to protect slave property, and that limited, in express words, to fugitives between State and State! and but one clause in it to protect the master against his slaves, and that limited to States! and but one clause in it to tax slaves as property, and that limited to States! and but one clause in it to give a qualified representation to Congress, and that limited to States. No; the thing is impossible. The owner cannot carry his slave State law with him into the Territory; nor can he carry it into another slave State, but must take the law which he finds there, and have his property governed by it; and, in some instances, wholly changed by it, and rights lost, or acquired by the change. For instance, in Virginia slaves are a chattel interest, and belong to the husband, though come by the wife, and may be seized and sold for his debts—even those contracted before marriage; or he may give them away, or devise them to his own kin, or children by another marriage. Removed to Kentucky with these slaves, they become real estate, and belong to the wife, and her blood; and the husband has no more rights in them than in her land. If he removed again and got into Tennessee with his slaves, they return to their chattel condition; and go as they would in Virginia. And if he passed on as far as Louisiana, another metamorphosis of his property! for there they become real estate again, governed by its laws—and also become subject (the husband's own, if he has or acquires any) to the civil law partnership between husband and wife. So that the doctrine of the Supreme Court will not do—neither in States nor Territories: for the owners can in no case carry their slave law beyond the limits of their own State.*

* This obvious view did not escape Mr. Webster when this novel doctrine was first broached in the Senate, in 1848, (on an Oregon Territorial Bill,) nor the dissenting justices in the Dred Scott case. Mr. Webster, with a few remarks, exposed the fallacy of the objection—thus: "The southern Senators say we deprive them of the right to go into these newly acquired Territories with their property. We certainly do not

In its terms the opinion of the Supreme Court stops at the invalidation of an act of Congress which shall prohibit slavery in a Territory: upon its principle and reasons it should invalidate any other act having the same effect—whether it be the

---

prevent them from going into those Territories with what is, in general law, called property. But these States have by their local laws created a property in persons, and they cannot carry these local laws with them. Slavery is created, and exists by a local law, which is limited to a certain section; and it is asked that Congress shall establish a local law in other Territories to enable southern Senators to carry their particular law with them. No man can be held as a slave unless the local law accompany him."

And thus Mr. Justice M'Lean:—"Will it be said that the slave is taken as property, the same as other property which the master may own? To this I answer, that colored persons are made property by the law of the State, and no such power has been given to Congress. Does the master carry with him the law of the State from which he removes into the Territory? and does that enable him to coerce his slave in the Territory? Let us test this theory. If this may be done by a master from one slave State, it may be done by a master from every other slave State. This right is supposed to be connected with the person of the master, by virtue of the local law. Is it transferable? May it be negotiated, as a promissory note or bill of exchange? If it be assigned to a man from a free State, may he coerce the slave by virtue of it? What shall this thing be denominated? Is it personal or real property? Or is it an indefinable fragment of sovereignty, which every person carries with him from his late domicil? One thing is certain, that its origin has been very recent, and it is unknown to the laws of any civilized country. It is said the Territories are common property of the States, and that every man has a right to go there with his property. This is not controverted. But the Court say, a slave is not property beyond the operation of the local law which makes him such. Never was a truth more authoritatively and justly uttered by man. Suppose a master of a slave in a British island owned a million of property in England; would that authorize him to take his slaves with him to England? The Constitution, in express terms, recognizes the *status* of slavery as founded on the municipal law: 'No person held to service or labor in one State, *under the laws thereof*, escaping into another, shall,' &c. Now, unless the fugitive escape from a place where, by the municipal law, he is held to labor, this provision affords no remedy to the master. What can be more conclusive than this? Suppose a slave escape from a Territory where slavery is not authorized by law, can he be reclaimed? In this case, a majority of the Court have said that a slave may be taken by his master into a Territory of the United States, the same as a horse, or any other kind of property. It is true, this was said by the Court, as also many other things, which are of no authority."

And thus Mr. Justice Curtis:—"Is it conceivable that the Constitution has conferred the right on every citizen to become a resident on the Territory of the United States with his slaves, and there to hold them as such, but has neither made nor provided for any municipal regulations which are essential to the existence of slavery? Is it not more rational to conclude that they who framed and adopted the Constitution, were aware that persons held to service under the laws of a State are property only to the extent and under the conditions fixed by those laws; that they must cease to be available as property, when their owners voluntarily place them permanently within

constitution, or law, of a State coming into existence in the same Territory, and taking its place. The principle is, that the constitution carrying slavery into the territory, the holding slaves there is a constitutional right which cannot be defeated by an act of Congress. Now, that being the case, can any other authority defeat it? Can a State do it? Can one State do by itself what all the States together in Congress cannot do? The inequality, degradation, insult and injury of being debarred from an equal use of a common property, is the *gravamen* of the complaint: now this degradation, insult, injury, and inequality, would be precisely the same if done by a State law, or a State constitution, as if done by an act of Congress. The damage would be the same, and the insult greater, because done by a single State, and a young one fresh from the territorial condition, and setting at defiance the rights of all the old slave States to which it might owe its existence. The case would cry equally for the interposition of the Supreme Court, and it would be a case in which the court would have a clear right to interpose. For the Constitution of the United States is supreme over State constitutions, State laws, and State judiciaries. It overrides them all wherever it goes;* and going into the new State with the same right and duty to protect persons and property in the enjoyment of a common right with which it had entered the territory, the same remedy would require to be given for the same wrong. And there would be no taking position upon State rights; for no State has any right to do any thing contrary to the Constitution. The argument of the Court proves too much;

---

another jurisdiction, where no municipal laws on the subject of slavery exist? moreover, if the right exists, what are its limits, and what are its conditions? If citizens of the United States have the right to take their slaves to a Territory, and hold them there as slaves, without regard to the laws of the Territory, I suppose this right is not to be restricted to the citizens of slaveholding States. A citizen of a State which does not tolerate slavery can hardly be denied the power of doing the same thing. And what law of slavery does either take with him to the Territory? If it be said to be those laws respecting slavery which existed in the particular State from which each slave last came, what an anomaly is this? Where else can we find, under the law of any civilized country, the power to introduce and permanently continue diverse systems of foreign municipal law, for holding persons in slavery?"

* This Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, any thing in the constitution or laws of any State to the contrary notwithstanding. [*Cons., Art.* 6.]

and, pushed to its legitimate conclusions, would invalidate State constitutions and laws as readily as it does acts of Congress, there being no difference in the right to go and to stay in the State as well as the Territory, as long as there remained in it any soil acquired by the common blood, and the common treasure of the whole.

But there is practice as well as argument on this doctrine of carrying slaves into territories, and having them protected there by the Constitution. We have had some slave territories—Missouri, Arkansas, Florida,—into which that property was carried. Was it done under the Constitution? No! But under the territorial law, sanctioned, not by the Constitution, but by Congress, and governed after it got there by the territorial law. No one carried the State law with him. He left that behind, and took what he found in the Territory; and if he had found no law there, the slaves would have been free, *maugre* the Constitution, which, extended over territories without laws to apply it, would be a cloud without rain, as even in the States for which it was made, and in which it recognizes slavery and the rights of the owner. No right can be exercised under it, not even reclaiming a fugitive from service, without an act of Congress.

I only occupy myself with the political part of the Court's opinion—that part of it which is intended to act on the power of Congress; and to set forth this part in its clearest light, and to separate it from the personal part which acts on the freedom of Scott and his family. I here present these political decisions, (as I deem them to be,) from the official report of the case, as I find them condensed in the Reporter's synoptical view, prefixed to the report. That synopsis classes the different branches of the decision under five divisions, of which only two—the third and the fourth—claim my attention. They are as follow:

III.

"The clause in the Constitution authorizing Congress to make all needful rules and regulations for the government of the territory and other property of the United States, applies only to territory within the chartered limits of some one of the States when they were colonies of Great Britain, and which was surrendered by the British Government to the old Confederation of the States, in the treaty of peace. It does not apply to territory acquired by the present Federal Government, by treaty or conquest, from a foreign nation.

"The United States, under the present Constitution, cannot acquire

territory to be held as a colony,* to be governed at its will and pleasure. But it may acquire territory which, at the time, has not a population that fits it to become a State, and may govern it as a Territory until it has a population which, in the judgment of Congress, entitles it to be admitted as a State of the Union.

"During the time it remains a Territory, Congress may legislate over it within the scope of its constitutional powers in relation to citizens of the United States—and may establish a Territorial Government—and the form of this local Government must be regulated by the discretion of Congress—but with powers not exceeding those which Congress itself, by the Constitution, is authorized to exercise over citizens of the United States, in respect to their rights of persons or rights of property.

IV.

"The territory thus acquired, is acquired by the people of the United States for their common and equal benefit, through their agent and trustee, the Federal Government. Congress can exercise no power over the rights of persons or property of a citizen in the Territory which is prohibited by the Constitution. The Government and the citizen, when-

---

* "Colony."—It is no part of the design of this Examination to remark upon any thing in the Court's decision but the two points mentioned—the abrogation of the Compromise Act, and the extension of the Constitution to territories; but the phrase "colony," and the doctrine delivered in relation to that species of dependency, calls for a remark which, as it cannot go into the body of the work, must find a place in a note. The meaning of it is too well fixed to admit of ambiguous sense, even in a popular harangue, much less in a judicial decision. It always signifies a body of cultivators transplanted by the government to a distant possession, and governed and protected there by the mother country, of which it is to be always the dependent—never the equal. The term has never been applied to our territories, and cannot be without a total change in their nature. Distance, governmental transplantation, perpetual inferiority, is their inexorable characteristic. As such, the question of colonies is purely and simply a political question, for the determination of the political power; and as such was determined some fifty odd years ago by our Government. The determination was, that the United States would have no colony which required a navy to guard it, and to keep open communication with it. And that determination, by its import and express terms, admitted Cuba as an exception—that island being near enough to our coast to be safely reached without the convoy of a fleet, and strong enough in its natural and artificial defences to be protected by land forces. But while this exception of Cuba was made, all designs upon it inconsistent with fair purchase, or honorable conquest in just war, were sternly repudiated. The doctrine of the old school was that, geographically, Cuba belonged to the New World, and to the North American part of it, and to the United States as the chief power of North America; and politically, to Spain: and that, while Spain declined to sell, and gave us no just cause of war, she was to be undisturbed in the possession of that island—

ever the Territory is open to settlement, both enter it with their respective rights defined and limited by the Constitution.

"Congress have no right to prohibit the citizens of any particular State or States from taking up their home there, while it permits citizens of other States to do so. Nor has it a right to give privileges to one class of citizens which it refuses to another. The Territory is acquired for their equal and common benefit—and if open to any, it must be open to all upon equal and the same terms.

"Every citizen has a right to take with him into the Territory any article of property which the Constitution of the United States recognizes as property.

"The Constitution of the United States recognizes slaves as property, and pledges the Federal Government to protect it. And Congress cannot exercise any more authority over property of that description than it may constitutionally exercise over property of any other kind.

"The act of Congress, therefore, prohibiting a citizen of the United States from taking with him his slaves when he removes to the Territory in question to reside, is an exercise of authority over private property which is not warranted by the Constitution—and the removal of the plaintiff, by his owner, to that Territory, gave him no title to freedom."

These decisions upon their face show themselves to be political, and tried by the test of enforcement, they are proved to be so. The Supreme Court cannot enforce these decisions; and that is the test of its jurisdiction. Where it cannot enforce, it cannot try. The Court is an authoritative body, acting with authority, and having power to enforce its decisions wherever it has jurisdiction. It can issue its command—(*mandamus, we command*)—and has a machinery to execute it—marshals, jails, fines, imprisonment. None of this machinery can be employed upon Congress and the people. Suasion is the only operative agent upon them; and this agent, either moral or political, is not the weapon of the Court. The pulpit and the forum persuade: a court commands. It, therefore, acted, on these points, without jurisdiction; that is to say, without right; and, what is more,

---

as much so as in the island of Cadiz. But no other power was to be allowed to get it from Spain, either by purchase or conquest. If it was to be sold, the United States had the pre-emption right of purchase: if to be conquered, we the conqueror. But all this open and above board—no pretexted wars, no false claims, no fictitious quarrels, no annoying, no bullying, no forced sale.—*Jefferson's Letters.*

(as will be seen in the course of this examination,) did what the political power refused to do when moved thereto in 1847 and '48. The extension of the Constitution to Territories was then attempted and repulsed. To give a right to the Supreme Court to try the question of African slavery in free Territories, was then attempted, and denied.* To abrogate the Missouri Compromise, though the act was then denounced, was not attempted —Mr. Calhoun himself saying it was "not to be attempted"— assigning as a reason that the attempt would disturb the Union; his real reason being, that the party which did it would stand responsible for what might (in consequence) happen to the Union: for he was a man of head, and of system, and in all these movements constantly affected the defensive.

I conclude this introductory note with recurring to the great fundamental error of the Court, (father to all the political errors,) that of assuming the extension of the Constitution to the Territories. I call it assuming, for it seems to be a naked assumption without a reason to support it, or a leg to stand upon —condemned by the Constitution itself, and the whole history of its formation, and administration. Who were the parties to

---

* It was in 1848, in one of the abortive bills reported by a select committee for the government of the new territories, and in which the slave was to have the right of suing his master for his freedom, with an appeal to the Supreme Court. The readiness with which the debate ran into the personal composition of the Court, and became political and geographical, and distrustful of the judges, as the speaker and the judge should be on opposite sides of Mason & Dixon's line, shows the extreme delicacy of carrying such questions to the Court. Thus: "Mr. Corwin asserted his belief, that if Senators from the South believed that in an appeal to the Supreme Court, in cases under this bill, the decision would be against them, they would never vote for this bill. So, if the Senator from Vermont (Mr. Phelps) thought the decision would be against him, he would never vote for it." "Mr. Foote feared that the decision of the Supreme Court, as now constituted, would be against the South." "Mr. Hale professed to have no confidence in the Supreme Court, as now constituted." "Mr. Reverdy Johnson believed in the existence of the power in Congress to pass a law to prohibit slavery in territories, and if such a law was presented to the Supreme Court for a decision on its constitutionality, it would be in favor of the law. As a judicial question, the decision would be against the protection of the South." Mr. Badger, of North Carolina, "Had a respect for the Supreme Court, but he was not willing to leave the decision of the question to a court, so large a portion of which was opposed to slavery." Mr. Bell, of Tennessee, opposed the bill on the ground, "that the Court was the weakest of the three co-ordinate branches of the Government—too weak to command obedience, or to settle such questions; and he drew the inference that a decision of it before a tribunal so feeble might break down the Court, while it failed to satisfy the public mind.—*Mr. Bell on Oregon.*

it? The States alone. Their delegates framed it in the Federal convention: their citizens adopted it in the State conventions. The North-West Territory was then in existence, and had been for three years; yet it had no voice, either in the framing, or adopting of the instrument—no delegate at Philadelphia, no submission of it to their will for adoption. The preamble shows it was made by States, and for States. Territories are not alluded to in it. The body of the instrument shows the same thing, every clause, except one, being for States; and Territories, as political entities, never mentioned once; and the word "territory," occurring but once, and that as property, assimilated to other property—as land, in fact; and as a thing to be disposed of—to be sold. Now you never sell a territorial government; but you sell property: and in that sense alone does the word territory occur, and that but once in the whole instrument. Tried by the practice under it, and the Territory is a subject, without a political right—no right to vote for President, or Vice President, or Senator, or Representative in Congress; nor even to vote through their delegate, on any question in Congress—all their officers appointable and removable by the federal authority, even their judges—their Territory to be cut up as Congress pleases; even parts of it to be given to Indians: no political rights under it, except as specially granted by Congress: no benefit from any act of Congress, except specially named in it, or the act specially extended to them, like the subject colonies and dependencies of Great Britain. How can the Constitution go to them of itself, when no act of Congress under it can go to them unless specially extended? Far from embracing these Territories, the Constitution ignores them, and even refuses to recognize their existence where it would seem to be necessary —as in the case of fugitives from service, and from labor. Look at the clause. It only applies to States—fugitives from States to States.* Why? because the ordinance of '87, the organic law of the Territories, made that provision for the Territories, and about in the same words, and before it was put in the Consti-

* "No person held to service or labor in one *State*, under the laws thereof, and escaping into *another*, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on the claim of the party to whom such service, or labor, may be due."— *Article* 4, *sec.* 2.

tution.* In both places it is an organic provision, barren of execution until a law should be passed under it to give it effect—which was done in the fugitive slave and criminal act of 1793—that act applying to Territories as well as to States—and so carrying both the Constitution and the ordinance into effect. This view is fundamental and decisive, and requires to be better known by the public than it is. There are two distinct clauses in the Constitution—one applying to fugitives from service, the other to fugitives from justice. They are both limited to States.† Under these clauses, a criminal or slave fugitive to or from a Territory, or from one Territory to another, or from one State to a Territory, or from a Territory to a State, cannot be demanded. A felon escaping with a stolen slave into a Territory, cannot be demanded under the Constitution. There are other clauses in the Constitution relating to slaves, not one of which extends to Territories. The fourth Article, section 4, guarantees protection against "domestic violence," (servile insurrection;) but the protection is limited to States.‡ Territories can only receive it from Congress. The acknowledgment of property in a slave, contained in the first Article, (which taxes slaves as property,) is confined to States. Not a clause in the Constitution which relates to slaves, extends to Territories—neither the fugitive slave clause, nor the protection against domestic violence, nor the acknowledgment of property implied in taxation: and if the Constitution was extended to Territories, (which it cannot be,) not a claim could be set up *under* it for protection to slave property! Not a law could be made *under* it for the protection of that property. The Constitution does

---

* "Provided, always, that any person escaping into the same, (the North-West Territory,) from whom labor or service is lawfully claimed in any one of the original *States*, such fugitive may be lawfully reclaimed, and conveyed to the person claiming his or her labor or service as aforesaid."—*Ordinance of* '87, *Art.* 6.

† "Any person charged in any *State* with treason, felony, or other crime, who shall flee from justice, and be found in *another State*, shall, on demand of the executive authority of the *State* from which he fled, be delivered up to the *State* having jurisdiction of the crime."—*Article* 4, *section* 2.

‡ The United States shall guarantee to every *State* in the Union a *republican* form of government, and shall protect each of *them* against *invasion*; and, on application of the legislature or of the executive, (when the legislature cannot be convened,) against *domestic* violence."—*Art.* 4, *sec.* 4.

not even grant protection to a Territory against invasion! * nor does it guarantee them a republican † form of government! and that is the reason that they have never been governed on republican principles. And this is the instrument which gives such supreme protection to slave property in Territories! After this, to say that the Constitution extends to Territories, would be about equal to saying that the territorial ordinance of '87 extends to the States. The pretension was driven out of Congress when it presented itself there: judicially decreed by the Supreme Court, it becomes accepted law to one half the Union; and acquiescence from all others who do not consider the difference between judicial and political subjects: and is not to be a barren power in the administration of our Government. Mr. Calhoun declared its effect when he proclaimed it, saying:

"*I deny that the laws of Mexico can have the effect attributed to them, (that of keeping Slavery out of New Mexico and California.) As soon as the treaty between the two countries is ratified, the sovereignty and authority of Mexico in the territory acquired by it becomes extinct, and that of the United States is substituted in its place, conveying the Constitution with its overriding control over all the laws and institutions of Mexico inconsistent with it.*"—Oregon Debate, 1848.

This is the declared effect of the transmigration of the Constitution to free territory by the author of the doctrine; and great is the extent of country, either acquired or to be acquired, in which the doctrine is to have application. All New Mexico and California at the time it was broached—all the Territories now held, wherever situated, and as much as can be added to them—these additions have already been considerable, and vast and varied accessions are still expected. Arizonia has been acquired; fifty millions were offered to Mexico for her northern half, to include Monterey and Saltillo; a vast sum is now offered for Sonora and Sinaloa, down to Guaymas; Tehuantepec, Nicaragua, Panama, Darien, the Spanish part of San Domingo, Cuba! with islands on both sides of the tropical continent. Nor do we stop at the two Americas, their coasts

* Article 4, section 4. † Same.

and islands, extensive as they are; but circumvolving the terraqueous globe, we look wistfully at the Sandwich Islands, and on some gem in the Polynesian group; and plunging to the antipodes, pounce down upon Formosa in the Chinese Sea. Such were the schemes of the last Administration, and must continue, if its policy should continue. Over all these provinces, isthmuses, islands, and ports, now free, our Constitution must spread, (if we acquire them, and the decision of the Supreme Court stands,) overriding and overruling all anti-slavery law in their respective limits, and planting African slavery in its place, beyond the power of Congress or the people there to prevent it.

I object to the Court's opinion, not only because it was without jurisdiction, and wrong in itself, but because it was political, pertaining to the policy, or civil government of the Union—interfering with the administration of the affairs of the State.

HISTORICAL AND LEGAL

EXAMINATION

OF THE

SUPREME COURT'S DECISION ON THE MISSOURI COMPROMISE ACT, AND THE EXTENSION OF THE CONSTITUTION TO TERRITORIES,

AS PRONOUNCED IN

THE DRED SCOTT CASE.

This Examination divides itself into three parts :—

First.—As it concerns the power exercised by Congress over the original Territory of the United States. Secondly.—As it concerns the new Territory acquired by the Louisiana purchase. Thirdly.—As it concerns the Missouri Compromise Act. And it will be the point of the whole Examination to show that Congress exercised, and rightfully, supreme authority over these Territories, both original and acquired; that it governed them independently of the Constitution, and incompatibly with it, and by virtue of sovereign and proprietary rights; that it did what it deemed best for the young community, as a father does for his children; and that the question of admitting or prohibiting slavery, either in the new or old Territories, never rose higher than a question of expediency. And that this continued to be the case, without distinction of men or parties, and with the

universal concurrence of all departments of the Government—legislative, judicial and executive, State and Federal—from the legislative adoption of the ordinance of '87 in the year '89, down to the abrogation of the Missouri Compromise Act, in 1854.

FIRST STAGE OF THE EXAMINATION:—POWER OF CONGRESS OVER THE ORIGINAL TERRITORY.

I.—At the head of the objections to the Court's opinion, stands the uniform action of the Government for thirty-six years on one of its branches, and seventy on the other. Uniformity of action on the part of authorities, appointed to administer government, is usually admitted to be evidence of right action; and, it is believed, no higher case of uniformity of governmental action—or of longer continued uniformity—or on the part of better qualified authorities—can be found than in the case under consideration. In point of length of time, it is that of the existence of the Government; in point of uniformity, no exception; in point of fitness in the actors, most eminent—consisting of the generation which founded the Government, and the second generation, disciple of the first, which succeeded to its administration; comprehending in all this time all the departments of all the governments, State and Federal—and in all their branches—legislative, executive, and judicial. Such uniformity furnishes a persuasive evidence that this action was right; and it is the object of this Examination to show that it was so, by showing what that action was, and the reasons upon which it was founded; so that the authority of law and reason may be added to that of uniform practice.

It was from the 7th day of August, 1789—that is to say, from the beginning of the first session of the first Congress under the Federal Constitution—that this uniformity began. It was on that day that the new-born Congress, putting the new Government into operation, adopted as a part of its machinery, and adapted to the working of the new Government, the famous ordinance of 1787, for the government of the North-West Territory—changing not one word in its whole enactments, except

to substitute the President and Senate for the old Continental Congress, in making the Territorial appointments, and holding the communications with the officers, which the ordinance required. The preamble declared its object—to adapt it to the present Constitution, and to continue its full effect in the Territories; and the enactments of this adopting, and adapting, statute, corresponded with its declared object. It was brief, and in these words:

"WHEREAS, In order that the ordinance of the United States in Congress assembled, for the government of the territory Northwest of the river Ohio may continue to have full effect, it is requisite that certain provisions should be made, so as to adapt the same to the present Constitution of the United States: THEREFORE, *Be it enacted*, That in all cases in which by the said ordinance any information is to be given, or communication made by the Governor of the said Territory to the United States in Congress assembled, or to any of their officers, it shall be the duty of the said Governor to give such information, and to make such communication to the President of the United States; and the President shall nominate, and by and with the advice and consent of the Senate, shall appoint all officers which by the said ordinance were to have been appointed by the United States in Congress assembled; and all officers so appointed shall be commissioned by him; and in all cases where the United States in Congress assembled might, by the said ordinance, revoke any commission or remove from any office, the President is hereby declared to have the same powers of revocation and removal. SECTION 2.—That in case of the death, removal, resignation, or necessary absence of the Governor of the said Territory, the Secretary thereof shall be, and he hereby is authorized and required to execute all the powers, and perform all the duties, of the Governor during the vacancy occasioned by the removal, resignation, or necessary absence of the said Governor."

Thanks to the wise custom which still, in proper cases, prefixed preambles to bills, and which was in use at the time of the passing of this act. The preamble is a key to unlock the meaning of an act, and in this case unlocks it very completely, by showing that its object was to "continue the full operation of the ordinance,"—and merely to adapt its working to the machinery of the new Government, which was done by the simple substitution of the President and Senate for the old Congress in the business of appointments, removals, and communi-

cations: and with this exception, no other part of the ordinance was touched—every provision and every enactment remaining as it was, and the new Congress left to do whatever was required from the old Congress, as in approving or disapproving the acts of the Territorial legislation. No continuation of an act, at the change of a Government, could be more complete and perfect than in this brief act of the 7th of August, 1789, and its place in the list of acts passed, shows the degree of importance attached to it. It was No. 8. in that list!—the previous seven being those which were indispensable in putting the machinery of the new Government into operation in the States, as this act was to do the same for the Territories. The ordinance, then, became as much the act of the new Government as if it had originated under it; as if it had never existed before; as if it had undergone no transition from an expiring to a new-born Government. And with this accords the opinion of the Supreme Court, for it says:

"Among the earliest laws passed under the new Government, is one reviving the ordinance of 1787, which had become inoperative and a nullity upon the adoption of the Constitution. This law (the reviving law) introduces no new form or principles for its government, but recites, in the preamble, that it is passed in order that the ordinance may continue to have full effect, and proceeds to make only those rules and regulations which were needful to adapt it to the new Government, into whose hands the power had fallen."

And to the same effect, Mr. Justice M'Lean, in his dissenting opinion, thus:

"It is clear that the ordinance did not go into operation by virtue of the authority of the confederation, but by reason of its modification and adoption by Congress under the Constitution. It seems to be supposed, in the opinion of the Court, that the articles of cession placed it on a different footing from Territories subsequently acquired. I am unable to perceive the force of this distinction. That the ordinance was intended for the government of the Northwestern Territory, and was limited to such Territory, is admitted. It was extended to southern Territories, with modifications, by acts of Congress, and to some northern Territories. But the ordinance was made valid by the act of Congress, and without such act could have been of no force. It rested for its validity on the act of Congress, the same in my opinion, as the Missouri compromise line."

And thus the ordinance of the Continental Congress of 1787, became an act of the Federal Congress of 1789, and those who wish to attack it, must attack it as that *act*, and not as that ordinance. And now, the question is, by what authority? As an act of the old Congress, its validity had been questioned, there being nothing in the articles of confederation to justify it. As an act of the new Congress, it must find its authority independently of the one which had ceased to exist. Was it in the Constitution? The ordinance, as ordinance, was made before the Constitution, consequently not made under it. As an act of Congress, it was made after the Constitution, but not under it, for it is a clean and naked piece of abnegation and contradiction of the Constitution from beginning to end. Here there is a beginning—a starting point—necessary to be seen and considered at the commencement of every examination of the power of Congress to legislate for Territories; and at this point we see a Territorial form of government adopted and enforced, made before the Constitution, and contrary to its essential and fundamental principles; made in the plenitude of absolute power, and governing the Territory for its own good without reference to its will, and as a father governs and takes care of his infant children. And seeing all this, the question still recurs, by what authority? And the answer is, by the same authority in the new Congress of 1789 as in the old one of 1787, and that was the right of the owner to use what he owned, and of the sovereign to rule within his sovereignty. There was no authority in the articles of confederation to make the ordinance, yet Congress made it, and with the approbation of all the States. There was no authority in the Constitution to adopt it, yet Congress adopted it, and with the approbation of two generations. The right to hold land, and plant people upon it, was a right to take care of the land and the people; and that right became a duty in this case, by the engagement entered with the ceding States to dispose of the soil, and to build up political communities upon it. The Congress of the Confederation made the engagement, and executed it in the ordinance of 1787; the Constitution devolved the engagement upon the new Congress,* which executed it in

* All debts contracted, and all engagements entered into before the adoption of this Constitution, shall be as valid against the United States under this Constitution as under the Confederation.—*Article* 6.

the same way. One made the ordinance, the other adopted it; and the latter was the superior authority; and from the moment of the adoption, effaced the other; so that, while descriptively we may still quote the act as the ordinance of 1787, yet for legal effect and virtue, and for all the purposes of right and justice, it must be cited and considered as an act of Congress of 1789.

The character of the ordinance—its provisions and enactments—become the next inquiry; for the new Congress having adopted it, and made it its own, and enforced it, its provisions became the measure of the authority which the Congress exercised. And these will be found to be of the highest sovereign order—ruling people without their consent; giving and taking away offices; granting what it pleased as favor, nothing as right; and even abolishing the rights of private property without compensation: for many were the slaves set free in the old French settlements of Indiana and Illinois without compensation—set free for a public political object, without reference to the rights, or regard to the will of the owners.* That act of Congress, of August 7th, 1789, did all this, and with universal approbation; and certainly not under the Constitution; for they contradict it at all points. Certainly not by exercising the powers of the States; for no State had ever exercised such power. Certainly not under any written authority any where; for none such can be shown. How then did it get these powers? Simply as proprietor, and as sovereign! The Federal Congress of '89 got it as the Continental Congress of '87 got it—as a right incident to ownership and jurisdiction, and as a duty under the cession acts; and the only limitation upon its power was in the cession acts—in the obligation to dispose of the soil, to populate it, and to build up future Republican States upon it. And this it did, in the wisest manner for young, distant, and miscellaneous communities, subject to be composed of the vicious and the violent, as well as the good and the gentle—

* I consider the passage of this law to have been an assertion by the first Congress of the power of the United States to prohibit slavery within this part of the Territory of the United States; for it clearly shows that slavery was thereafter to be prohibited there, and it could be prohibited only by an exertion of the power of the United States, under the Constitution; no other power being capable of operating within that Territory after the Constitution took effect.—*Mr. Justice Curtis.*

holding them in a state of pupilage, as a father does his children, training them by degress to self-government, and admitting them to it when prepared for it. On no other ground than that of absolute authority (limited only by the cession acts) over these Territories can the enactments of this act of Congress be accounted for; and upon that ground I place it, disclaiming any help from any quarter—from Federal or State authority, single or combined.

The ordinance provided only for the government of the Territories—not for the disposal of the lands within them; and hence the propriety of the clause in the Constitution to authorize Congress to dispose of the territory, *i. e.* the land; and to make needful rules and regulations respecting it. Neither that clause, nor any other in the Constitution, applied to the government of the Territory, because that had been provided for in the ordinance; and the ordinance itself had been provided for in the assumption by the new Federal Government of all the engagements entered into by the old Continental Congress; and that engagement was promptly fulfilled by the adoption of the ordinance among the very first acts of the new Government. Though entitled for the North-West Territory, this fundamental Territorial law was intended for the South-West also, and was applied to the Territories there as soon as they were ceded; and, in fact, became the basis of all the Territorial governments down to the passage of the Kansaz-Nebraska Act in 1854. The ordinance was the Constitution for the Territories, as the Constitution itself was for the States; and both were parts of the same system, and made at the time, (the ordinance a few days first,) and by the same men, it may be said;* and in concert: and no Constitution could have been made but hand in hand with the ordinance. That measure settled the slavery question! without which settlement no Constitution could have been made. It settled it, by dividing the western Territory about equally between the free and the slave States—the Ohio river, (about equidistant from the northern lakes and the southern gulf,) being taken as the dividing line; and it made the free

* Besides the identity of feelings and of object, in the members of the two bodies, several were actually members of both at the same time: as, Mr. Madison, of Virginia; Mr. Rufus King, of New York; William Samuel Johnson, of Connecticut; William Blount, of North Carolina; Charles Pinckney, of South Carolina; William Few, of Georgia.

Territory safe for the slave States by the stipulation in favor of the restoration of fugitive slaves. The settlement of this question smoothed the road to the formation of the Constitution. The two bodies sat at the same time—the Continental Congress at New York, the Federal Convention in Philadelphia—and were composed of men united in principle, and laboring for the same object. The ordinance was formed the 13th of July, abolishing slavery in the North-West, and authorizing the recovery of fugitives from service: the corresponding clause in the Constitution for the recovery of fugitives was adopted on the 29th of August following. That brings them near together in point of time, and shows the dependence of one upon the other. Then comes identity of phraseology, both the same, and so dainty in the selection of its words: * "Persons," instead of slaves—"fugitives," instead of runaways—"held to service," instead of being owned—"the party lawfully claiming," instead of master; and then the phrase "escaping," used in both, and not proper in either as applicable to a runaway slave. The phrase implies a condition which is not the normal state of the slave; as confinement, and danger. A prisoner escapes from custody; a soldier escapes death. Such identity of language, and so unusual in speaking of runaway slaves, and all amphibological, could not have been hit upon except in concert, and as agreed upon beforehand; which in fact was the case: for the clause is one of the compromises of the Constitution. And then the congruity of their provisions, each providing for a want in its own case, not in the other. The clause in the ordinance being made for Territories, the recovery of the fugitive is limited to the escapes from one of the original States to a Territory: the clause in the Constitution being made for States, is confined to escapes from one State to another. And why? Because the Constitution was made for States, and would not in any way act

* There shall be neither slavery nor involuntary servitude in the said Territory, otherwise than in the punishment of crimes, whereof the party shall have been duly convicted, *provided always*, that any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original States, such fugitive may be lawfully reclaimed, and conveyed to the person claiming his or her labor or service as aforesaid.—*Ordinance.*

No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.—*Constitution.*

upon a Territory.* Then the identity of the vote in each; for in each the vote upon the clause was the same—to wit: unanimous. Then the origin of the clause in each, being both from the South; the clause in the Ordinance coming from a committee of five, of which two were from Virginia and one from South Carolina: that in the Constitution coming from South Carolina, moved by Mr. Pierce Butler, and seconded by his colleague, Mr. Charles Pinckney. These similitudes in the two clauses, and the instant adoption of the Ordinance by the first Congress under the Constitution, identify them as parts of the same system, the work of the same heads, and essential the one to the other—that is to say, the Ordinance to the Constitution: for if the slavery question had not been settled as therein done —Territory divided and runaway slaves to be given up—there would have been no Constitution! and, consequently, no Union! So indispensable was the Old Congress to the Convention, that it not only sat as long as the Convention did, but longer—waited to receive its work, and provide for its adoption by the States. Some members of the Convention, as Mr. Madison, returned to the expiring Congress, and assisted at this good work. The newly-formed Constitution was forwarded by Gen. Washington, as President of the Convention, to the President of the Congress, with a patriotic letter recommending its adoption. The old Congress placed the instrument before the States, urged its acceptance, and expired after that last act; so that the Congress and the Convention—the Ordinance and the Constitution—were all parts of one harmonious whole.

The whole Constitution was carried out upon the principle of ignoring the existence of Territories; I speak of Territories, implying political existence and organization, in contradistinction to territory, signifying land; and repeat that, as political entities, the Constitution ignores them. This may be seen in every

* The same in the clause for reclamation of fugitives from justice. It only applies between State and State. "A person charged in *any State* with treason, felony, or other crime, who shall flee from justice, and be found in *another State*, shall on demand of the executive authority of *the State* from which he fled, be delivered up, to be removed to *the State* having jurisdiction of the crime." No Territory included here although *State* is four times mentioned, and the evil to justice is the same, whether the fugitive flies to a land called State, or called Territory. And why this limitation to States in a case equally exigent in Territories? Because the Constitution was not made for Territories, and would not authorize any action upon them.

clause—strongly in the two instances just given, and in those previously given; and still more strongly in the article which relates to the establishment of courts. If there is one branch of the government which, above all others, and more than all others, concerns the whole body of the community, it is the judicial department. The administration of justice, civilly and criminally, may reach every individual of a country. No age or sex, no rank, no condition of rich or poor, no conduct—not even that of virtue and merit itself—is secure from litigious involvement. The first care of the organic and legislating power is to give a judiciary to the people; and this is what our Constitution has carefully done, as far as our system of government required its action. It has provided for the trial of all cases which could invoke the Federal authority—all between citizens of different States, and between citizens and foreigners, and for all cases arising under the Federal laws; all cases, in short, which were not left to the State courts; so that between the two systems the citizen should have a remedy for every wrong. Did this extend to the Territories? Not at all! The Federal judiciary system does not reach them, nor the State systems either. What then? are they without Courts? By no means. Congress supplies them, and in a way to show that they do not do it under the Federal Constitution, or in conformity to any State Constitution known in our America. They made judges to hold office for a term of years, *subject to be removed by the President, like any common office-holder;* and several have been so removed: and they gave codes of law, both civil and criminal, not only over the organized Territories, reduced to our possession, but over the wild territory, still in the hands of the Indians. By the decision of the Supreme Court, this would seem to be unconstitutional and void—a consequence which seemed to sit hard on one of the brother justices who had acted under these laws, and who, while agreeing in the decision upon the Missouri Compromise Act, did it for a different reason from that which would have condemned his own action.* Certainly

* "It is due to myself to say, that it is asking much of a judge, who has for nearly twenty years been exercising jurisdiction, from the western Missouri line to the Rocky Mountains, and, on this understanding of the Constitution, inflicting the extreme penalty of death for crimes committed where the direct legislation of Congress was the only rule, to agree that he had been all the while acting in mistake, and as an usurper."—*Mr. Justice Catron.*

all this legislation was incompatible with the Constitution, but no violation of it, because the Constitution did not reach these Territories, either civilized or savage. Finally, and to make clear this point, the clause in the original proposition to make needful rules and regulations respecting the territory of the United States, also proposed to authorize Congress to institute temporary governments in the new States arising therein—which was struck out, and properly; the ordinance having already made provision for such governments.

People of the slave States have a prejudice against that ordinance as being a northern measure, put upon them by the North, and from hostility to slavery. No conception could be more unfounded. That ordinance, in all its forms and features, in its inception, in its consummation, and in the cause which gave rise to it, was a southern measure, given by the South to the country—known to everybody as such at the time—and provably so now. It grew out of the Virginia cession, (the instant that cession was made,) and the other expected cessions from North Carolina and Georgia. It was these cessions which gave territory; others were little better than barren quit-claims. Virginia gave the Northwest; Georgia and North Carolina the Southwest;* and the delegates of these States naturally and

* South Carolina believed at the date of her cession, (August 9, 1787,) that she was ceding a large territory quite out to the Mississippi; but it was afterwards found to be small. Still, her deed of cession, though barren inland, is rich in showing her good will to the Union, (the formation of which required these cessions;) and also in showing her good will to the ordinance; the cession having been a month after it, and when she expected her ceded Territory to be governed by it. Of this cession one of the dissenting judges says:

"But this Northwestern Territory was not the only Territory, the soil and jurisdiction whereof were then understood to have been ceded to the United States. The cession by South Carolina, made in August, 1787, was of 'all the territory included within the river Mississippi, and a line beginning at that part of the said river which is intersected by t e southern boundary of North Carolina, and continuing along the said boundary line until it intersects the ridge or chain of mountains which divides the eastern from the western waters; then to be continued along the top of the said ridge of mountains, until it intersects a line to be drawn due West from the head of the southern branch of the Tugaloo River, to the said mountains; and thence to run a due West course to the river Mississippi.' It is true that by subsequent explorations it was ascertained that the source of the Tugaloo River, upon which the title of South Carolina depended, was so far to the northward, that the transfer conveyed only a narrow slip of land, about twelve miles wide, lying on the top of the ridge of mountains, and extending from the northern boundary of Georgia to the southern boundary

properly, in the Continental Congress, took the lead in providing for the government of the districts which had been their own, and of which they were the donors to a new sovereign. The Virginia deed of cession was delivered in March, 1784; Mr. Jefferson, then a delegate in Congress, and one of the signers of the Virginia deed, immediately moved for a committee to bring in a bill to give a government to the ceded territory. Leave was granted—himself chairman of the committee. It was a proper occasion for the organizing mind of that law-giver and statesman, and well did he avail himself of it. In a month he reported his plan. It was one of the most perfect pieces of legislation that ever came from the human mind—a code in itself, and divided into two parts, and each part complete for its object; the first part, to train up young republican communities for the exercise of sovereign rights; the second, to secure to the same communities, when ripened into States, the permanent blessings of civil and religious liberty. Plato had his imaginary Republic, and Sir Thomas More his mythical Utopia, for which they framed imaginary governments, founded in theories of human perfectability; but Jefferson had a real field to work in—a vast domain, fertile and beautiful, extending from the Alleghanies to the Mississippi, and from the northern lakes to the southern gulf, (for it was known that North Carolina and Georgia would cede,) in which to plant real communities, and to build up real republics; and nobly did he do his work—how nobly the States attest which have grown up upon it. And for seventy years it stood, unmarred and undefaced, and spread far

---

of North Carolina. But this was a discovery made long after the cession, and there can be no doubt that the State of South Carolina, in making the cession, and the Congress in accepting it, viewed it as a transfer to the United States of the soil and jurisdiction of an extensive and important part of the unsettled territory ceded by the Crown of Great Britain by the treaty of peace, though its quantity or extent then remained to be ascertained."—*Mr. Justice Curtis.*

To the same effect spoke another of the justices—one from the West, though not exactly in the predicament of Mr. Justice Catron, thus:—"There is a law of Congress to punish our citizens for crimes committed in districts of country where there is no organized government. Criminals are brought to certain Territories or States, designated in the law, for punishment. Death has been inflicted in Arkansas and in Missouri, on individuals, for murders committed beyond the limit of any organized Territory or State; and no one doubts that such a jurisdiction was rightfully exercised. If there be a right to acquire territory, there necessarily must be an implied power to govern it."—*Mr. Justice McLean.*

wider than he had foreseen—from the Mississippi to the Rocky Mountains—from these to the shores of the Pacific. For, wherever a Territorial government has been formed on our continent in all this long time, and over all this wide expanse—from '87 to '54—from Florida to Oregon—the ordinance of '87 has been its basis. Even the Kanzas-Nebraska act, in all that is good and wise in it, is copied from that fundamental law.

The ordinance which he (Mr. Jefferson) reported, passed the Congress of the Confederation—became the law—was in force for three years, with all the wise and beneficent provisions now in it—one only excepted—and until it was repealed in 1787. He reported it with an anti-slavery clause, the prohibition to take effect after the year 1800: that is to say, sixteen years after the passing of the ordinance.* This clause, on the motion of Mr. Spaight, some time Governor of North Carolina, was struck out—the reason being that it did not contain a provision for the recovery of fugitives from service. For the rest, the ordinance passed—went into operation—and remained in force until superseded by the amended, and, in some degree, new-modeled ordinance of 1787—a southern measure in all its aspects. It was passed in a sitting of the Congress in which the slave States present were as near as could be, two to one; to wit: five to three; and where the slave State delegates were exactly two to one over the free State members. The power of the slave States was there: Virginia, the two Carolinas, Georgia. It was reported from a committee of which the majority were from slave States, and passed unanimously—every State voting for it, and every delegate from every State, except one from New York.† This

* The clause was in these words: "That after the year 1800 of the Christian era, there shall be neither slavery nor involuntary servitude in any of the said States, (those to be formed out of the North-west Territory,) otherwise than in punishment of crimes whereof the party shall have been convicted to have been personally guilty."

† The committee consisted of Messrs. Carrington and R. H. Lee, of Virginia; Mr. J. Kean, of South Carolina; Mr. Dane, of Massachusetts; Mr. Smith, of New York. The ordinance was reported, Wednesday, the 11th of July, read a first time, and ordered to a second reading the next day; read the second time the next day, and ordered to a third reading on the ensuing day, (Friday, 13th;) was read the third time that day, and unanimously passed. The States present, and voting for it, were: Massachusetts, New York, New Jersey; (three non-slaveholding:) Delaware, Virginia, North Carolina, South Carolina, Georgia; (five slave-holding.) The act of Congress for continuing it in force passed the House with the same readiness, receiving its three readings in four

amended ordinance contained the anti-slavery clause, with the fugitive slave recovery clause, (without which latter it could not have been passed;) and it was known at the time that this clause, and the parallel one in the Constitution, were parts of one system, necessary to the formation of the Constitution; and putting the recovery of fugitives from service on the same footing in the Territories as in the States. In the anti-slavery clause of this amended ordinance, it is to be remembered there was a wide departure from the terms of Mr. Jefferson's provision of 1784, in this: that by his provision the abolition of slavery in the Territory did not take effect until sixteen years after the passing of the ordinance, giving the owner time to be indemnified in labor for his care and expense about the young slaves; but the amended act abolished all ownership at once, without reference to the rights or interests of the owner. And it is this amended act, thus governing a young community as children under age, and thus seizing private property for an object of public policy, that the Congress of 1789 adopted, and made a statute of the United States; and in which Congress, as Mr. Justice Curtis has taken the trouble to ascertain, there were fourteen members who had been delegates in the Federal Convention which made the Constitution—Mr. Madison one of them.

I must be allowed to make a stand at this point—and upon this point—and to consider it as the authoritative exemplification, and assertion, of the power of Congress over the Territories; going the whole length of governing a Territory as it pleased, and legislating upon slavery to the extent of the instant and uncompensated emancipation of a great number of slaves.*

---

days (16th to 21st July)—without objection or division, as far as can be seen from the journals and debates. And thus, the record history of the day proves that ordinance to be a southern measure—southern in all its aspects—conception and consummation, and the cause which gave rise to it. Yet in the South and West it is generally regarded as an invidious measure, imposed upon the slave States by the free—an error much cultivated of late, but taking its rise in the great debate on nullification between Mr. Webster and Mr. Hayne, and in the prominent part assigned by the former to Mr. Dane, of Massachusetts, in the formation of that ordinance—a prominence excusable in oratory, but not justifiable in history.

* The freed were in great numbers, and greatly to the loss and discontent of the owners, which led to many applications to suspend that part of the ordinance, and many legislative contrivances in Indiana and Illinois to evade it—resulting in many lawsuits, either at home or in the neighboring slave States of Missouri and Kentucky—

It might be supposed that this was sufficient, (and it certainly is so,) to show that the Congress of the Constitution made the ordinance of '87 its own, and must stand for its author by the adoption they gave it. But I am not yet done with the Congress sanctions of this measure. Five times afterwards it was sanctioned by one or other House of Congress—as far as a refusal to impair it can become a sanction. It has been seen that the inhabitants of Indiana and Illinois—(Vincennes, Kaskaskia, Cahokia, Prairie de Rocher, &c.,)—were discontented at the loss of their slaves, and had recourse to legislative contrivances, and judicial reclamations, to evade the effect of the ordinance. They also applied to Congress to suspend, for a limited term, the anti-slavery clause in favor of the rights of the slaveholder—all in vain—each refusal (and there were five of them,) operating as a congressional sanction of the measure. In one of these refusals, the report of the committee, drawn by Mr. Randolph, states the reasons for refusing to grant the request of the petitioners, with so much clearness and beauty of language, and with such elevated views of national policy, and pays so just a tribute to the "sagacious and benevolent" ordinance, and so well pronounces the danger and inexpedience of impairing—a danger and inexpedience since fully realized in the abrogation of the parallel case of the Missouri Compromise Act—that all may read it with pleasure who either admire chaste writing, or enlightened statesmanship. It is here put in a note for their perusal.*

---

the freed people always preferring to try their case in a slave State, where they found most favor. Of this, Mr. Senator Breese, of Illinois, well acquainted with what he related, bore testimony in the Senate in the debate on an Oregon bill in '48. Replying to a member who thought a free person of color could not get a fair trial in a slave State, he said: "In all his observations and experience in cases of this sort, and they have not been inconsiderable, he has discovered that the courts of the slave States have been more liberal in their adjudications upon the question of slavery than the courts of some of the free States. The courts of one of them (Illinois) had uniformly decided against the right of freedom claimed by persons held in bondage under a modified form of servitude recognized by its old Constitution. In precisely similar cases, the courts of Kentucky and Missouri, to which States such persons had been taken, decided in favor of the right to freedom. And it is a remarkable fact that in all cases in these States, and he believed in other slave States, where there was any doubt about the right to hold the person in slavery, the decision has been invariably in favor of the right to freedom."

* "The rapid population of the State of Ohio sufficiently evinces, in the opinion of your committee, that the labor of slaves is not necessary to promote the growth and

Having seen what the first Congress, and some of its early successors, thought of this ordinance, we will now look into the opinion of some of the States—beginning with Virginia—a State which from its character and weight in the Union, its generation of illustrious men, and its close connection with the subject as the great donor of public lands, should be of the greatest authority in this case. Beginning with Virginia, so much bound, and so well able to scrutinize the conduct of Congress in executing the high trust confided to it: what did she say to this ordinance? Repulse it? No! But took it to her bosom, and embraced it with maternal affection. As early as December 30th, 1788, the Virginia General Assembly, by a solemn act, sanctioned the ordinance in agreeing to a single alteration which the Continental Congress asked to be made in it, and which could not be made without her consent. That was the sanction of Virginia, the year after the ordinance was made, and the year before it was adopted by Congress. She saw nothing in it beyond the power of the Congress of the Confederation to achieve; and she was then the sole party to it on the side of the States, being up to that time the only effective grantor of public lands. Next came North Carolina, another effective donor, ceding her western territory in April, 1790—the year after Congress had adopted the ordinance; and in her deed of cession made it an article of compact, irrevocable by Congress, to grant to her ceded territory, (now the State of Tennessee,) the whole ordinance of '87, with the single stipulation that Congress should not emancipate slaves—a clear admission that Congress might otherwise do it.* Twelve years after came

settlement of colonies in that region. That this labor, demonstrably the dearest of any, can only be employed to advantage in the cultivation of products more valuable than any known to that quarter of the United States; that the committee deem it highly dangerous and inexpedient to impair a provision wisely calculated to promote the happiness and prosperity of the Northwestern country, and to give strength and security to that extensive frontier. In the salutary operation of this sagacious and benevolent restraint, it is believed that the inhabitants will, at no very distant day, find ample remuneration for a temporary privation of labor and of emigration."—[*Committee Reports*, 1806.]

* *Fourthly.* That the territory so ceded shall be laid out and formed into a State or States, containing a suitable extent of territory, the inhabitants of which shall enjoy all the privileges, benefits, and advantages set forth in the ordinance of the late Congress for the government of the Western Territory of the United States. . . . . *Provided always*, That no regulation made, or to be made by Congress, shall tend to emancipate slaves.—*North Carolina Cession Deed.*

Georgia—the last of the effective ceding States, and in her deed of cession made it also an irrevocable article of compact, the same as North Carolina had done, that the ordinance should be extended to her ceded territory—now the States of Alabama and Mississippi. The stipulation was in these words: (and that of North Carolina was the same:)—

"*That the territory thus ceded shall form a State, and be admitted as such into the Union as soon as it shall contain* 60,000 *free inhabitants, or at an earlier period, if Congress shall think expedient, on the same conditions and restrictions, with the same privileges, and in the same manner provided in the ordinance of Congress of the* 13*th of July,* 1787, *for the government of the Western Territory of the United States, which ordinance shall, in all its parts, extend to the territory contained in the present act of session, that article only excepted which forbids slavery.*"

This was in the year 1802; and thus we have, in a period of fourteen years, the sanctions of the three great ceding States—and they Southern States—to this ordinance; Virginia, as a question of expediency, accepting the abolition of slavery on the part she ceded; North Carolina and Georgia, as a like question of expediency, retaining slavery in the parts ceded by them. It is needless to add that all the other nominally ceding States, (South Carolina inclusive,) gave in their sanction to the ordinance—after it was made, as well through their delegates in the old Congress when it was made—and through their representatives in the first Federal Congress when it was adopted.

I return to the Congress—the Federal Congress, and give two strong instances of action on slavery in that body—South-western Territory, and original United States Territory; one in 1798, the other in 1806. The first was in organizing the Mississippi Territory, which was done by spreading the ordinance of '87 over it; the whole, with the exception of the anti-slavery clause, and that clause having been proposed to be applied to it also, it was resisted solely upon expedient grounds—not a word being uttered against the power of Congress to do so.* But a provi-

* Mr. Harper, of South Carolina: "In the Northwestern Territory the regulation forbidding slavery was a very proper one, as the people inhabiting that part of the country were from parts where slavery did not prevail, and they had, of course, no slaves among them; but in the Mississippi Territory it would be very improper to make such a regulation, as that species of property already exists, and persons emigrat-

sion in restraint of the growth of slavery there was adopted, (on the motion of Mr. Robert Goodloe Harper, of South Carolina,) in forbidding the importation of slaves from any port or place without the limits of the United States, and making such importation a penal offence, punishable by fine, and giving freedom to the slave.* This was a strong measure, especially in its penalty, and marks the difference between States and Territories, being ten years before Congress would have the constitutional right to prohibit such importation into one of the old States.

The other instance was in the year 1806, when Mr. David R. Williams, then, and for six years afterwards, a leading member from South Carolina, moved, (Feby. 7,) that a committee be

---

ing there from the Southern States would carry with them property of this kind. To agree to such a proposition would, therefore, be a decree of banishment to all the persons settled there, and of exclusion to all those intending to go there. He believed it could not, therefore, be carried into effect, as it struck at the habits and customs of the people." Mr. Giles, of Virginia: "Did not know whether the tendency of the proposed measure was calculated to ameliorate the condition of the class of men alluded to: he believed not. On the contrary, it was his opinion that, if the slaves of the Southern States were permitted to go into the Southern country, by lessening the number in these States, and spreading them over a large surface of country there would be, a greater probability of ameliorating their condition." Mr. John Nicholas, of Virginia, and Mr. Rutledge, of South Carolina, spoke against the expediency of the measure; and also some members from the free States—among them Mr. Harrison Gray Otis, of Massachusetts, who was glad to have it in his power to show his indisposition to interfere with the Southern States in their management of this species of property. "He thought it was not the business of those who had nothing to do with that kind of property to interfere with that right; and he really wished that the gentlemen who held slaves might not be deprived of the means of keeping them in order. If the amendment prevailed, it would declare that no slavery should exist in the Natchez country. This would not only be a sentence of banishment, but of war. An immediate insurrection would take place, and the inhabitants would not be suffered to retire in peace, but would be massacred on the spot." None of these speakers, nor anybody else at that time, saw any thing unconstitutional in Congress legislating upon slavery in Territories, and abolishing it in such districts if it thought proper.

* *Section* 7. "That from and after the establishment of the aforesaid government, it shall not be lawful for any person or persons, to import or bring into the said Mississippi Territory, from any port or place without the limits of the United States, or to cause to be so imported or brought, or knowingly to aid or assist in so importing or bringing any slave or slaves; and that every person so offending, and being thereof convicted before any court within the said Territory, having competent jurisdiction, shall forfeit and pay for each and every slave so imported or brought, the sum of three hundred dollars; one moiety for the use of the United States, and the other moiety for the use of any person or persons who shall sue for the same; and that every slave, so imported or brought, shall thereupon become entitled to, and receive his or her freedom." [*Act of April* 7, 1798.]

appointed, "to inquire wither any, and if any, what additional provisions were necessary to prevent the importation of slaves into the Territories of the United States." The committee was granted, and the members consisted almost exclusively of slave State representatives, to wit: Mr. David R. Williams, of South Carolina; Mr. John G. Jackson, of Virginia; Mr. Thomas Spalding, of Georgia; Mr. James Kelly, of Pennsylvania; and Mr. William Blackledge, of North Carolina: Mr. Macon, of North Carolina, the speaker, making the appointments. On the 27th of March, the committee reported, and brought forward a bill, "*to prohibit the introduction of slaves into the Mississippi Territory, and the Territory of Orleans;*" which was read a first, and a second time, and committed to a Committee of the whole House; but was not reached during the brief remainder of the season. The proceedings upon it, however, as far as they went, are pregnant with pertinent reflection. The motion was made by a Southern member; the committee, appointed by a Southern speaker, were four to one from the slave States: the bill seems to have been unanimously reported; it applied both to the original and the newly acquired territory, and in all the steps in relation to it—raising the committee, reading the bill, referring it to the Committee of the whole House; it was treated as a mere ordinary piece of legislation, to the consideration of which there was no objection. Though a silent mode of showing an opinion, there could not have been a clearer one in favor of the constitutionality of the proceeding, nor a stronger declaration that the House saw no difference in the power of Congress over the old and the new territory.*

In addition to these States, and the Congress, there was another authority which acknowledged this ordinance, and sanctioned it, and provided for it—and with power to do so; and that in the critical moment of its existence in the government's transition from the confederate to the Union State. That

* I have caused search to be made in the files of the House for this bill, but without effect—it belonging to the period when the capital was burnt by the British, and the records before 1814 in great part destroyed. But the precision of the journal shows the character of the bill,—"*to prohibit the introduction of slaves into the Mississippi Territory, and Territory of Orleans.*" This was a universal prohibition, and evidently intended to restrain the great increase of slaves in those two Territories—the considerate and thinking men of that day looking forward to the time, when, in that extreme south, the black population might become too numerous for the tranquillity and safety of the white race.

authority is the Constitution itself; a very competent authority, and which provided for the ordinance co-incidently with its creation, and in terms clear in themselves, and well understood at the time, though I believe forgotten now—although they stand in the Constitution, and nothing else has been found for them to attach to. It is in that clause of Article VI. which says:—

"All debts contracted, and all engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution as under the Confederation."

Here are two classes of obligations provided for—"debts contracted, and engagements entered into;"—and the framers of our Constitution were not the men to provide for two things when they only knew of one; nor even then to use two words when one was enough; nor to use any word which had not an object of its own to attach to. The first class of obligations here referred to—the debts—readily commanded their appropriate attention, and were long enough a weight upon the country to be understood and remembered: but what of the other—"engagements entered into,"—hardly remembered, or understood at all, and nothing to call attention to it, or any use for it since the 7th day of August, *Anno Domini*, 1789—the day on which the first Congress of the Constitution provided for the engagements which the Congress of the Confederation had entered into with the land-ceding States. The adoption of the ordinance of '87, on that day, was the performance of that engagement. The parties to it were the Congress of the Confederation and the land-ceding States—all of them; for it was known at the time that North Carolina and Georgia would follow the example of Virginia in ceding theirs. The engagement itself was,—*first*, to dispose of the ceded land,—*secondly*, to build up political communities upon it. And the Constitution provided for the fulfilment of both branches of the engagement, and the adoption of the ordinance fulfilled the political part of the engagement,—building up political communities on the Territory; and the clause in the Constitution for disposing of the Territory, and other property of the United States, followed by acts of Congress to sell the public land, fulfilled the other. This latter clause, with its authority to make needful rules and regulations respecting the territory, &c., has been, in latter times, generally under-

stood as authorizing the political action of Congress over the Territories. The history of the times shows this to be an error, so far as giving a government to the Territory is to be understood. The clause, as first proposed by Mr. Madison, included temporary governments for the new States arising on this territory. Referred to the Committee of Detail, of which Gouverneur Morris was chairman, it was returned with "governments" struck out, and adopted by the Convention as it now stands,* the "temporary governments" omitted, and "unappropriated lands" substituted by "territory or other property," and rules and regulations added—significant alterations, and which go to repulse the government power, and to identify "territory" as meaning land. This makes it clear that this needful rule and regulation clause did not include government, and that it was struck out, and properly because the ordinance had provided for these governments—both Territorial and State. I know it has been much, and most respectably relied on, that this clause gave to Congress both the right to govern these Territories, and to dispose of the lands within them. I think not, with respect to the government. As to the disposition of the territory, and the rules and regulations respecting it, I think Congress would have as much power in making this disposition and establishing these rules and regulations as any other land-holder; and that would certainly include, not merely its sale, but the choice of labor, free or slave, and the entrance of persons upon it.

It is remarkable that this ordinance of an expiring Government was its last act, and its adoption the first act (nearly) of the nascent Government, born out of its ruins; the former, a circumstance which has been dwelt upon (of late) to the disadvantage of the expiring Government, as an act of authority when

* The entries in relation to this clause, stand thus in Mr. Madison's debates in the Federal Convention:—

"Mr Madison submitted, in order to be referred to the Committee of Detail, the following powers, as proper to be added to those of the general legislature.

"To dispose of the unappropriated lands of the United States.

"To institute temporary governments in the new States arising therein."

These propositions were referred to the Committee of Detail, August 18, 1787.

Mr. Gouverneur Morris moved to take up the following:—

"The legislature shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution contained shall be so construed as to prejudice any claims, either of the United States, or any particular States." [August 30.]

power was departing, but which history classes with the prudent foresight of a wise man dying, and putting his affairs in order for the benefit of his successor; for such was the conduct of the last Congress of the expiring Confederation. It knew it was expiring; it knew it was to be succeeded by a new Government; it knew it had entered into engagements which others would have to fulfil; and it wisely and honestly put these engagements into perfect form, in the revised and amended ordinance, that its successor should have nothing to do but adopt its work. And it should never be forgotten that this ordinance was the work of the southern land-ceding States, of Virginia, the two Carolinas, and Georgia, whose power did it. As to its adoption by the first federal Congress, it seems to have been unanimously done; the journals and debates showing no division; and that Congress knew what it was about was very probable, both from the character of the members, their familiarity with the events of the day, and the fact that fourteen of them had been members of the Convention which framed the Constitution.

Such is the testimony of States, of Congresses, and of the Constitution in favor of this ordinance; but we have another of a different character, partaking of the judicial, as the others do of the legislative authority, and hardly less entitled to respect. I speak of St. George Tucker, (the father,) some time one of the judges of the General Court of Virginia, professor of law in the ancient University of William and Mary, and editor of an edition of Sir William Blackstone's Commentaries, with notes and references to American law, to assist the American law-student. In one of these notes, (Appendix D., vol. 1.) written some fifty-five years ago, when the history of the formation of this Government was part of his daily current knowledge, he thus speaks of this ordinance, and the engagement clause in the Constitution:—

"Congress, under the former Confederation, passed an ordinance, July 13th, 1787, for the government of the territory of the United States north-west of the Ohio, which contained, among other things, six articles, which were to be considered as articles of compact between the original States and the people and States of the said territory, and to remain unalterable, unless by common consent. These articles appear to have been confirmed by the sixth article of the Constitution, which declares that all debts contracted, and all engagements entered into

before the adoption of the Constitution, shall be as valid against the United States, under the Constitution as under the Confederation."

Such is the contemporary evidence of an eminent judge, writing for the information of the young generation, free from question or excitement, and in daily intercourse with the men who founded the Government. To him it was all clear that the ordinance was made to fulfil the engagement to the land-ceding States, and that the sixth article in the Constitution was put in to devolve the fulfilment upon the new Government.

It is observable that the Supreme Court, in its opinion, takes no notice of Judge Tucker's application of this engagement clause in the Constitution, and without applying it in the same way, is somewhat indistinct in its own application of it, resulting, possibly, from having read the clause in three parts instead of two; "debts, contracts, and engagements entered into," instead of "debts contracted, and engagements entered into." It seems, in fact, merely referred to to illustrate, by analogy, the meaning of the clause in relation to the territory and other property of the United States.* As providing for the ordinance,

* "The necessity of this special provision in relation to property and the rights of property held in common by the confederated States, is illustrated by the first clause of the sixth article. This clause provides that 'all debts, contracts, and engagements entered into before the adoption of this Constitution, shall be as valid against the United States under this Government as under the Confederation.' This provision, like the one under consideration, was indispensable if the new Constitution was adopted. The new Government was not a mere change in a dynasty, or in a form of government, leaving the nation or sovereignty the same, and clothed with all the rights, and bound by all the obligations of the preceding one. But, when the present United States came into existence under the new Government, it was a new political body, a new nation, then for the first time taking its place in the family of nations. It took nothing by succession from the Confederation. It had no right, as its successor, to any property or rights of property which it had acquired, and was not liable for any of its obligations. It was evidently viewed in this light by the framers of the Constitution. And as the several States would cease to exist in their former confederated character upon the adoption of the Constitution, and could not, in that character, again assemble together, special provisions were indispensable to transfer to the new Government the property and rights which at that time they held in common; and at the same time to authorize it to lay taxes and appropriate money to pay the common debt which they had contracted; and this power could only be given to it by special provisions in the Constitution. The clause in relation to the territory and other property of the United States provided for the first, and the clause last quoted provided for the other."—*Opinion of the Court.*

it does not seem to be referred to at all. And, it may be, that admitting the force of the ordinance in the old territories, the Court saw no necessity to fortify it. But that admission is so hedged in with qualifications, limiting it to the old territory, and so hampered with dependence upon the compacts, and so stinted in its reduction to the combined power of Congress and the States, that I have deemed it just to trace it through its history, and place it upon its proper foundation: 1. The broad and solid foundation of sovereignty. 2. Proprietorship. 3. The Constitution. 4. The adopting act of Congress. 5. The sanction of many Congresses, and of all the land-ceding States. And thus fortified, it becomes the strongest measure over persons and property, in Territories, which the history of our legislature affords; as much stronger than the Missouri Compromise Act as the abolition of existing slavery, without regard to proprietary rights, is stronger than the prospective prohibition of slavery in places where it never existed.

SECOND STAGE OF THE EXAMINATION: POWER OF CONGRESS OVER THE NEW TERRITORIES.

II. In the acquisition of Louisiana came the first new territory to the United States, and over it Congress exercised the same power that it had done over the original territory. It saw no difference between the old and new, as the Court has done, and governed both, independently of the Constitution, and incompatibly with it, and by virtue of the same right—Sovereignty and Proprietorship! the right converted into a duty, and only limited by the terms of the grant in each case.

Louisiana was acquired in the spring of 1803: an extra session of Congress was called to ratify the treaty of acquisition, and to provide for the occupation and government of the new possession. The called session met in October, and immediately passed an act providing for the two objects—the first section of the act putting the armed force, military and naval, at the disposition of the President to enable him to receive the possession; the second, providing for a temporary government: and which was in these words:—

"That until the expiration of the present session of Congress, unless provision for the temporary government of the said territories be sooner made by Congress, all the military, civil and judicial powers exercised by the officers of the existing government of the same, shall be vested in such persons, and shall be exercised in such manner, as the President of the United States shall direct for maintaining and protecting the inhabitants of Louisiana in the free enjoyment of their liberty, property and religion."

This bill emanated from a select committee, of which Mr. John Randolph was chairman; Messrs. John Rhea, of Tennessee, William Hoge, of Pennsylvania, Gaylord Griswold, of New York, and George Michael Bedinger, of Kentucky, were members: but those who are familiar with the inside working of the legislative machinery, know very well that bills of this particular kind—to carry into effect a measure of the Government, originating in a treaty with a foreign power—always come down from the department of State, supervised by the President: and in this instance, the special message of the President which brought the subject before Congress, and asked for "temporary provision" for the government of the Territory, the presumption of its origin in the State Department assumes the character of certainty. It was a startling bill—continuing the existing Spanish government—putting the President in the place of the King of Spain—putting all the territorial officers in the place of the King's officers—and placing the appointment of all these officers in the President alone, without reference to the Senate. Nothing could be more incompatible with our Constitution than such a government—a mere emanation of Spanish despotism, in which all powers, civil and military, legislative, executive and judicial, were in the Intendant General representing the King; and where the people, far from possessing political rights, were punishable arbitrarily for presuming to meddle with political subjects. Not only was the nature of the Government thus continued wholly incompatible with our Constitution, but its machinery and appointment of officers were equally so. They were to be appointed by the President without the advice and consent of the Senate: and certainly the American Governor who was to replace the Spanish Intendant General in that important province, and the judges who were to replace the royal Cabildo in the city of New Orleans, were

not the "inferior officers" whose appointment, by the Constitution, would vest in the President alone. In no Territory organized under the ordinance of 1787, even the most inconsiderable, were these officers so considered. Here then was a double incompatibility with our Constitution—*first*, in the Government itself; *secondly*, in the appointment of the officers to administer it: and it is not to be supposed that such enactments, so startling in themselves, and so novel in a Republic of Anglo-Saxon origin, could pass without observation—without scrutiny—from that jealous Republican party which had just come into power, and come in upon the cry of saving the Constitution at the last gasp. And still less to be supposed that it would escape the notice of the eminent Federal men in Congress, no friends to the acquisition of Louisiana, and willing to hold the Republican members to the test of their liberty-loving principles. The unobserved passage of such an act, in such a state of parties, was not to be expected: and unobserved it was not, nor unscrutinized either. It roused attention when it was read. It was canvassed from the beginning, and through all its stages, and on the double ground mentioned. Mr. Roger Griswold, of Connecticut, (Federal,) moved to strike out the whole section, saying: "He wished to know what were the civil, military, and judicial functions exercised by the Spanish officers; and expressed the belief that some of them were inconsistent with the Constitution of the United States; and referred to the writ of *habeas corpus*, which could not be in force under the act, and which Congress could only constitutionally suspend in cases of rebellion or invasion." Mr. James Elliott, of Vermont, (Republican,) seconded the motion of Mr. Griswold, saying: "He would never consent to delegate, for a single moment, such extensive powers to the President, even over a Territory: such a delegation of power was unconstitutional." Mr. Dana, of Connecticut, (Federal,) expressed himself thus: "The President may, under this authority, establish the whole code of Spanish laws, however contrary to our own, appoint whomsoever he pleases as governor and judges, and remove them according to his pleasure; thus uniting in himself all power—legislative, judicial, and executive."

This was bringing out objections to the constitutionality of the bill, sufficiently clearly and strangely to merit an answer

from its friends—and received it, reminding the objectors that this was a Territory—not a State; and that the Constitution had nothing to do with it. Thus, Mr. Rodney (Cesar Augustus) of Delaware, (Republican:) "There is a wide distinction between States and Territories, and the Constitution appears clearly to indicate it. In the Territories of the United States, under the ordinance of Congress, the Governor and judges have a right to make laws. Could this be done in a State? I presume not. It shows that Congress have a power in the Territories which they cannot exercise in the States, and that the limitations of power, found in the Constitution, are applicable to States and not to Territories."

Mr. Griswold replied, and more earnestly and pointedly, saying: "By the section under consideration, power is given to the President to appoint all the officers in the province, from the governor down to the lowest officer. Gentlemen will not say that the office of governor, or judge, is one of the inferior offices contemplated by the Constitution. They had never been so considered. In all the arrangements for the territorial governments the sanction of the Senate had been required for the governors, judges, secretaries, etc.; whereas, in this instance, the President is clothed with power to appoint all officers in the Territory. He apprehended that such a power could not be constitutionally given."—This brought up Mr. Randolph, who compressed his argument into the single word, sovereignty, saying: "Gentlemen will see the necessity of the United States taking possession of this country in the capacity of sovereigns, in the same extent as that of the existing government of the province."—Mr. Joseph H. Nicholson, of Maryland, (Republican,) spoke more at large. He said: "Is there any difference between this section and the provisions of the ordinance of 1787, which relates to territorial governments? By that ordinance, and I have never heard its constitutionality questioned, all the civil, military, and judicial powers are vested in such persons as the President may appoint. Judicial powers are vested in persons appointed by the President: so with respect to the civil and military powers: and the legislative power is vested in a body, part of which is appointed by the President. I am, with other gentlemen, unable to say what are the nature and extent of the powers exercised by the present government of Louisiana;

but we must authorize the taking possession of the country; and we must, in such an event, authorize the exercise of these powers."—Mr. Mitchell, (Dr. Samuel H.) of New York, (Republican:) "The third section of the fourth article of the Constitution contemplates that territory and other property may belong to the United States. By a treaty with France, the United States has lately acquired title to a new Territory, with various kinds of property on it, or annexed to it. By the same section of the Constitution, Congress is clothed with power to dispose of such territory and property, and to make all needful rules and regulations respecting it. This is as fair an exercise of constitutional power as that by which we assemble, and hold our seats in this house."—Mr. Joseph B. Varnum, of Massachusetts, (Republican,) and sometime speaker of the House: "We are told we are about to authorize the exercise of power over the ceded territory not authorized by the Constitution: he would ask if the Constitution was to take effect as soon as the United States took possession of the Territory? On this point he would refer to the treaty. It provides for the incorporation of the inhabitants into the Union: but when? As soon as it can be done according to the principles of the Federal Constitution. In the mean time they are to be protected in the enjoyment of their liberty and property, and the religion they profess. In what mean time? There is a time when the country is acquired, and a time when it will be admitted into the Union. Between these periods—in the mean time—the people are to enjoy their liberty, property, and religion."—Dr. Eustis, of Massachusetts, (Republican,) and sometime Secretary at War: "Though called upon to take immediate possession of this Territory, you are told you are not to govern it. This is the amount of the argument of gentlemen; for if you cannot govern it in this way, you can govern it in no other. He saw no other alternative: there was no possibility of any other course. He was, therefore, happy to see nothing in the Constitution which forbade pursuing it. On the contrary, it arose imperiously from the acquisition."—Mr. John Smilie, of Pennsylvania, (Republican:) "He agreed in opinion with the gentleman from Massachusetts, (Mr. Varnum,) that the Constitution did not extend to this Territory any further than they were bound by the compact between the ceding power and the people. On this prin-

ciple they had a right, viewing it in the light of a colony, to give it such a government as the Government of the United States might think proper, without thereby violating the Constitution. When incorporated into the Union, the inhabitants must enjoy all the rights of citizens. He would thank gentlemen to show him any part of the Constitution which *extends* either legislative, executive, or judicial power over this territory. If none such could be shown, it must rest with the discretion of the Government to give it such a system as might seem best for it."

On these objections and answers to the bill, the vote was taken to strike out the second section—the one objected to—and the motion almost unanimously rejected; and the question being taken on the passage of the bill, it passed in the affirmative—89 yeas to 23 nays: the negatives consisting almost entirely of those Federal members who, having opposed the acquisition of Louisiana, worked out their principle to its legitimate conclusion, in refusing to legislate for it. And thus the act passed the House as good as unanimously.

The bill had come from the Senate, and there being but little reporting of debates in that body at that time, and nothing reported on this bill, we are remitted to the journal to see the mere proceedings which took place upon it: and these are sufficiently full and significant to show the sentiments of that body upon it. From the journal of these proceedings it appears that on the 21st of October—(it was the session of 1803–'4)—Mr. Jefferson, by special message, informed the Senate as well as the House, that the Senate had ratified the Louisiana treaty, and asked the legislative aid from Congress which would enable him to take possession of the province and govern it temporarily. The same day Mr. John Breckenridge, of Kentucky,* gave notice that he would ask the leave of the Senate to bring in a bill to accomplish the objects of the message:—doubtless done in concert with Mr. Jefferson, of whom he was a leading friend. Leave was given, and the bill brought in the next day, and was the same that passed the House, with an amendment limiting its duration to the end of the session. It was read a first time, for information, the day it was brought in—the second time for reference, or consideration, the next day—

* Grandfather of the present Vice President.

and was referred to a select committee, (Mr. Breckenridge, Mr. Jonathan Dayton, of New Jersey, and Mr. Abram Baldwin, of Georgia,) to consider and report upon. On the day after, (Oct. 23d,) Mr. Breckenridge reported back the bill without any proposed alteration; the next day it was read the third time, and passed. No motion was made to strike out the second section, and the vote on its passage was nearly unanimous,* only six members voting against it, and they the members who opposed the treaty, and would no nothing to carry it into effect. The bill thus passed received the approbation of the President the same day it was laid before him; and to those who are acquainted with the working of the legislative machinery, it may well be believed that the whole proceeding was in concert with the administration—that Mr. Jefferson picked out Mr. Breckenridge to bring in the bill—that its principles were settled in cabinet meeting—that Mr. Madison drew it: and that every question in relation to it was duly considered before it was submitted to final action. And thus, this first instance of Congress legislation upon newly acquired territory was as high an instance of disregard of the Constitution as the imagination could conceive—being nothing less than the continuation of the Spanish regal despotism—the President taking the place of the King of Spain; Governor Claiborne,† the place of the Intendant General, Morales; the laws of Spain remaining in force and administered by American judges: and the whole provincial administration going on as if no change of government had taken place. It was a royal despotic Government,† and every

* The yeas were: Messrs. Joseph Anderson, of Tennessee; Theodorus Bailey, of New York; Abraham Baldwin, of Georgia; John Breckenridge, of Kentucky; John Brown, of Kentucky; Pierce Butler, of South Carolina; William Cooke, of Tennessee; John Condit, of New Jersey; Jonathan Dayton, of New Jersey; Christopher Ellery, of Rhode Island; Jesse Franklin, of North Carolina; James Jackson, of Georgia; George Logan, of Pennsylvania; Samuel Maclay, of Pennsylvania; Wilson Carey Nicholas, of Virginia; John Taylor, of Virginia, (usually discriminated as John Taylor, of Caroline;) Samuel J. Potter, of Rhode Island; Israel Smith, of Vermont; John Smith, of Ohio; Samuel Smith, of Maryland; David Stone, of North Carolina; William Hill Wells, of Delaware; Samuel White, of Delaware; Thomas Worthington, of Ohio; Robert Wright, of Maryland.

† William Charles Cole Claiborne, native of Virginia, sometime representative in Congress from Tennessee, and at that time territorial governor of Mississippi. He was a very proper man to be intrusted with the responsible and delicate duty to which he was appointed—urbane in manners, discreet in judgment, conciliatory in

body knew it; and no one thought of testing it by the Constitution (some few new members in the House excepted) than by the Koran.

This was the character of the first American territorial government of Louisiana—a continuation of Spanish despotism—and established by such men as then constituted the Federal Government—and who have had no superiors, before or since. Many of them had assisted in making the Constitution: all were under oath to support it: and all, (or as good as all,) voted for a bill which is contrary to that Constitution from beginning to end. And now, by what authority did they so vote? and the answer is, in the single phrase pronounced by Mr. Randolph—SOVEREIGNTY!

High as was this instance of Congressional absolute power over territories, it was succeeded at the same session by another, not so striking in its general character, but more so in some of its features, and very exemplificative of the fact that Congress paid no more attention to the Constitution in governing new Territories than in governing the old ones. The continuation of the Spanish monarchical government was an expedient for the occasion, temporary, and only intended to remain until a more suitable form of government could be matured; and no time was lost in carrying that intention into effect. As early as November 28th, Mr. Breckenridge, always a coadjutor of Mr. Jefferson, submitted a resolution in the Senate to raise a committee to prepare a form of government for Louisiana. The motion was ordered to lie for consideration. On the 5th of December it was considered and adopted, and Messrs. John Breckenridge, Robert Wright, of Maryland; General James Jackson, of Georgia; Abraham Baldwin, of Georgia; and John Quincy Adams, were the select committee to which the motion was referred. On the 30th December the bill was reported, and read a first time, and ordered to a second reading; on the 16th of January, read a second time, and being open to amendment, was taken up for discussion. On the 18th of February it had

temper; and gave so much satisfaction, that he was continued Governor during the eight years that the territorial condition remained, and was elected first Governor of the State, and afterwards Senator in Congress: but died before taking his seat.

* The first territorial government of Louisiana was an imperial one, founded upon a French or Spanish model.—*Mr. Justice Campbell.*

received its final consideration, and was passed by a vote almost unanimous, (only the usual six negatives opposed to the treaty,) and, so far as the provisions of the bill were concerned, quite so; for on motions to amend, or strike out, those who voted against the passage of the bill voted for its strongest provisions separately.

I am thus particular with these initiatory steps to show the care and caution with which our Congress proceeded in that early day, its close observance of all the rules which experience had devised for due deliberation in conducting business, and especially to show that all these rules were scrupulously observed in this case, and a most able committee appointed to bring in the bill.

The bill thus matured, and passed, and sent to the House, had taken the ordinance of 1787 for its basis, but with deviations required by the geographical position of the country, and its peculiar circumstances. It divided the province of Louisiana into two Territories, the upper and the lower; the upper taking the name, ultimately, of the Missouri Territory; the lower taking that of Orleans Territory. It is in the part of the bill which relates to this latter Territory, that the provisions were made which most strongly asserted the power of Congress in territorial legislation, and especially upon the subject of slavery. The tenth section was wholly taken up with this subject, and ran as follows:—

"Sect. 10. It shall not be lawful for any person or persons to import or bring into the said Territory, from any port or place without the limits of the United States, or cause or procure to be so imported or brought, or knowingly to aid or assist in importing or bringing any slave or slaves. And every person so offending, and being thereof convicted before any Court within said Territory, having competent jurisdiction, shall forfeit and pay for each and every slave so imported or brought, the sum of three hundred dollars; one moiety for the use of the United States, and the other moiety for the use of the person or persons who shall sue for the same; and every slave so imported or brought, shall thereupon become entitled to and receive his or her freedom. It shall not be lawful for any person or persons to import or bring into the said Territory, from any port or place within the limits of the United States, or to cause or procure to be so imported or brought, or knowingly to aid or assist in so importing or bringing, any slave or

slaves, which shall have been imported since the first day of May, one thousand seven hundred and ninety-eight, into any port or place within the limits of the United States, or which may hereafter be so imported from any port or place without the limits of the United States; and every person so offending, and being thereof convicted before any Court within said Territory, having competent jurisdiction, shall forfeit and pay for each and every slave so imported or brought from without the United States, the sum of three hundred dollars, one moiety for the use of the United States, and the other moiety for the use of the person or persons who shall sue for the same; and no slave or slaves shall directly or indirectly be introduced into said Territory, except by a citizen of the United States removing into said Territory for actual settlement, and being at the time of such removal *bona fide* owner of such slave or slaves; and every slave imported or brought into the said Territory, contrary to the provisions of this act, shall thereupon be entitled to, and receive his or her freedom."

This section contains three provisions on the subject of slaves: 1. That no one shall be imported into the Territory from foreign parts. 2. That no one shall be carried into it who had been imported into the United States since the first day of May, 1798. 3. That no one shall be carried into it except by the owner, and for his own use as a settler; the penalty in every instance being a fine upon the violator of the law, and freedom to the slave. The first of these prohibitions is the same that was passed for the Territory of Mississippi at its organization, in April, 1798; and which, as it has been shown, was unanimously supported by Southern members at the time it was adopted. The prohibition in the Orleans Territorial Act was four years before, and that in the Mississippi Act was ten years before, the constitutional right of Congress accrued to prevent the importation of slaves into the original States. It was a strong measure, in both instances, to show the impatience of Congress to put an end to the slave trade, and that, while it discriminated between States and Territories, it made no distinction between old and new territory, and legislated for each according to its discretion. The second prohibition was still stronger, and asserts a still higher power over the subject of slavery in a Territory. It reaches back to the first day of May, 1798, to get hold of a slave imported from abroad into any State or Territory since that time, and gives him liberty, and fines his conductor, if carried

into the Territory of Orleans. Now, the slave so to be liberated, was property in the State from which he should be carried, having been constitutionally imported into that State; yet if taken into this Territory by authority of his owner, the property was forfeited and lost, without compensation to his owner, and with a fine upon the owner for doing so; and all this as long as ten years, it might be, before the Congress had a right to prohibit the foreign importation of slaves. For what reason the first day of May, 1798, should have been taken for this date of prohibition, forfeiture and fine, does not appear; but, probably, to make it correspond with the prohibition of imported slaves into the Territory of Mississippi—the first Southern Territory in which Congress legislated upon slavery. But whether the date was taken for that reason, or for any other, or without reason, arbitrarily, the character of the act is the same—the assertion of a right in Congress to legislate upon slavery in a Territory without regard to the Constitution. The third prohibition was in the same line of policy, and still stronger than the two preceding. It liberated any slave, from any part of the United States, who should have been taken into the Territory, except by the *bona fide* owner, removing into it for actual settlement, and bringing the slave for his own use.

These three prohibitions certainly amount to legislating upon slavery in a Territory, and that a new Territory, acquired since the formation of the Constitution, and without the aid of compacts with any State.

None of these prohibitions passed the Senate without observation, or without consideration of their import. They were voted upon separately, either on motions to strike them out, or to extend them; so that the judgment of the Senate was deliberately expressed in each case, besides being sanctioned in the lump in the almost unanimous vote on the final passing of the bill.

The bill having passed the Senate, was taken up in the House, in which, besides the sanction to all its provisions in the final vote, there were several special votes given on motions of amendment, in which the House showed that it acted independently of the Constitution and repugnantly to it, and that upon special objection. Thus: the right to a jury trial, where the matter in controversy exceeded the value of twenty dollars, was

denied, though guaranteed by the Constitution, which was invoked on the occasion, but in vain. The royal power of prorogation was continued to the governor, though opposed by some members. Then the appointment of judges for a term of years, instead of during good behavior. In these, and many other instances a direct question was made upon the constitutionality of the provision, and always rejected upon the broad ground that the Constitution was not made for Territories, and had nothing to do with them.

A special stand was made on each of these cases, and some others, by a few members, holding the Constitution in their hands, and pleading its infraction by the proposed provisions. Thus, as an example of the whole, and as a repulse of the Constitution where its words would clearly apply; Mr. George Washington Campbell, of Tennessee, moved to amend the section providing for the judicial power; and which gave the right of jury trial both in civil and criminal cases, "*if either party desired it*," so as to make the right absolute in all criminal cases whatever, and in all civil cases where the value in controversy exceeded twenty dollars. He said: "He conceived that in legislating for the people of Louisiana they were bound by the Constitution of the United States. The Constitution expressly declares that, in criminal cases, the trial shall be by jury, and in all civil cases where the sum in controversy exceeds the value of twenty dollars the trial shall likewise be by jury. The ninth article of the amendments to the Constitution says: 'In all suits at common law where the value in controversy exceeds twenty dollars the right of trial by jury shall be preserved;' and the eighth article says: 'In all criminal trials the accused shall enjoy the right of a speedy trial by an impartial jury.'" Here was a direct question made between the bill and the Constitution, and the vote showed that the House deemed the bill, because territorial, independent of the Constitution. Only about thirty members voted for Mr. Campbell's motion, and about twenty-five of them, the opponents to the treaty, and who would do nothing to recognize the acquisition of the purchased province.

The anti-slavery section—the tenth—which contained the three prohibitions on importations and removals of slaves into Orleans Territory, encountered but little opposition; but there was some instructive debate on the general character of the bill

for the government of the Territory, as being a novelty in territorial government, in not conforming to either of the three grades provided by the ordinance of '87, but being a mixture of the two first grades. In this sense Mr. Macon, of North Carolina, said: "My first objection to the principle contained in the section, (the 4th,) is, that it establishes a species of government unknown to the laws of the United States. We have three descriptions of governments—that of the Union—that of the States—and that of the Territories. I believe the territorial government, as established by the ordinance of the old Congress, the best adapted to the circumstances of the people of Louisiana, and that it may be so modified as to meet their convenience. The people residing in the Mississippi Territory are under this kind of government. Is it not likely that the people of Louisiana will expect the same form of government and laws with their neighbors? The simple question is, what kind of government is most fitted for those people? I will not pretend to say they are fitted for a State government. The best way to prepare them for such a government is the system already known to our laws—one grade, or the other, of the territorial government. For my part, I should prefer (for them) the adoption of the second grade; but I would prefer the first to any new system." Mr. Lucas, (John B. C.,) of Pennsylvania: "An argument was drawn from the treaty, that these people are to be admitted to the absolute enjoyment of the rights of citizens; but gentlemen would not deny that the time when, and the circumstances under which the provisions of the treaty were to be carried into effect, were submitted to the decision of Congress. It has been remarked that this bill establishes elementary principles of government never previously introduced in the government of any Territory of the United States. Granting the truth of this observation, it must be allowed that the United States had never before devolved upon them the making provision for the government of a people under such circumstances." Mr. Varnum was of opinion that the section in the bill, (the 4th,) provided such a form of government as had never been known in the United States. Dr. Eustis, of Massachusetts, "did not believe that the section under consideration, in its present form, consistent either with the spirit of the Constitution or the treaty. The government laid down in the bill is

certainly a new thing in the United States; but the people of this country differ materially from the citizens of the United States. I speak of the character of the people at the present time. When they shall be better acquainted with the principles of our Government, and shall have become desirous of participating in our privileges, it will be full time to extend to them the elective franchise." Mr. Holland, of North Carolina:—"The provisions of this section are said to be worse than those of the first grade of territorial governments; but this is incorrect. The plan is not equal to the second grade, but it is certainly superior to the first grade. The first grade gives the governor and judges all the power granted by this section; and this section, in addition to the governor and judges, contemplates the appointment of thirteen councillors. Is not this preferable to giving the whole power to the governor and judges?" Mr. Boyle, of Kentucky: "I am unwilling to extend Government patronage beyond the line of irresistible necessity. For I believe, if ever this country is to follow the destiny of other nations, this destiny will be accelerated by the overwhelming torrent of executive patronage. I feel as high a veneration for the present chief magistrate as any man on this floor. I have retained the full force of my regard for him; but were he an angel instead of a man, I would not clothe him with this power; because, in my estimation, the investiture of such high powers is unnecessary." Mr. Sloan, of Pennsylvania: "Can anything be more repugnant to the principles of just government? Can any thing be more despotic than for a President to appoint a governor and a legislative council, the governor having a negative on all their acts, and power to prorogue them at pleasure? What liberty, what power, is here vested in the people?"

Mr. Justice Campbell, in quoting from these speeches, has been too brief to show distinctly their points of objection.* In

* Mr. Varnum said: "The bill provided such a government as had never been known in the United States." Mr. Eustis: "The government laid down in this bill is certainly a new thing in the United States."—Mr. Lucas: "It has been remarked, that this bill establishes elementary principles never previously introduced in the government of any Territory of the United States. Granting the truth of this observation," &c. &c. Mr. Macon: "My first objection to the principle contained in this section is, that it establishes a species of government unknown to the United States." Mr. Boyle: "Were the President an angel instead of a man, I would not clothe him with this

looking at them more fully, and in seeing the reasons they give for their opinions, they are seen to apply to the form of the government to be established, as being despotic, and as not conforming to the ordinance of '87, which, after its adoption by Congress in the year '89, became a law of the United States, and intended for the South-western as well as the North-western Territories: the anti-slavery clause alone excepted. The character of the bill was doubtless, as declared by these members, a despotism, unsanctioned by any principle in the Constitution, and repugnant both to its spirit and provisions; but that only proves that they acted independently of the Constitution, and knowingly refused to be governed by it. The bill was passed by a great majority—66 to 21.

But the legislative action of Congress on Territories at this session—1803–'4—did not stop at these two acts for Lower Louisiana: there was another act for the upper half of the province, afterwards called the Territory of Missouri, very worthy to be considered in this connection for its disregard of the Constitution and its want of discrimination between new and old territory. The Supreme Court makes a great difference between these two classes of territories, and a corresponding difference in the power of Congress with respect to them, and to the prejudice of the new Territory. The Congress of 1803–'4 did not see this difference; and acting upon a sense of plenary authority, it extended the ordinance across the Mississippi—sent the governor and judges of Indiana (for Indiana had then become a Territory)—sent this governor (William Henry Harrison) and the three Indiana judges across the Mississippi river, to administer the ordinance of '87 in that upper half of Louisiana. Such was the fact! and here is the law under which it was done, being section 12 of the act erecting Louisiana into two Territories, and providing for their temporary government:—

"The residue of the province of Louisiana, ceded to the United States, shall be called the District of Louisiana, the government whereof shall be organized and administered as follows: The executive power

---

power." Mr. G. W. Campbell: "On examining the section, it will appear that it really establishes a complete despotism." Mr. Sloan: "Can any thing be more repugnant to the principles of just government? Can any thing be more despotic?"—*Mr. Justice Campbell.—Annals of Congress*, 1803–'4.

now vested in the governor of Indiana, (then including Illinois,) shall extend to and be exercised in the said district of Louisiana. The governor and judges of Indiana Territory shall have power to establish, in the said district of Louisiana, inferior courts, and to prescribe their jurisdiction and duties, and to make all laws which they may deem conducive to the good government of the inhabitants thereof—subject to the disapproval of Congress."

Here was old and new territory coupled together under one territorial government, and the new put under the officers of the old, and both governed by the ordinance of 1787. The law-making power was delegated to them, and they might have suppressed slavery under that power; but finding the institution there, they let it alone. Such was the first territorial government of Upper Louisiana.

And now for the men who passed these acts—who established these governments—so incompatible with the Constitution, and so fully asserting absolute power over this new territory. Who were they? They were the men of the Revolution—of the ordinance of '87—of the Constitution of that year—of the first administration of the Federal Government in its early age;—and the authors of the acquisition of Louisiana. Mr. Jefferson was President—Mr. Madison Secretary of State—and the two Houses of Congress filled with men who had acted their good part in founding, and in putting into operation, the new Federal Government. These were the men who did these things, and who ought to be allowed to know something of their own work; and if they did not, somebody existing at the time ought to have known of their dreadful usurpations, and proclaimed them to the world. No such discovery was made. Fifty-four years have passed away since these things were done, and by such men, and with universal acceptance at the time, and with a half century of universal approbation: yet, if the decisions of the Supreme Court are to stand, and these territorial acts subjected to the test of the Constitution, it will only want a case to be got before the Court to subject them to abrogation, as the Missouri Compromise Act was after an honored existence of thirty-seven years.

It is now seen, from what has been shown, that, in governing their Territories, Congress and the Executive looked to their

rights as sovereigns and proprietors, and not to the Constitution, for their authority: and this view seems to have been that of the Supreme Court of the United States some thirty years ago. A case from the Territory of Florida, under a territorial law, was brought up to that Court which gave rise to the question, what Congress might do in the Territory? and what it might authorize the territorial legislature to do? In deciding this question, the Court, speaking through Chief Justice Marshall, says:—

"In the mean time Florida continues to be a Territory of the United States, governed by that clause of the Constitution which empowers Congress to make all needful rules and regulations respecting the territory or other property of the United States. Perhaps the power of governing a Territory belonging to the United States, which has not, by becoming a State, acquired the means of self-government, may result, necessarily, from the facts that it is not within the jurisdiction of any particular State, and is within the power and jurisdiction of the United States. The right to govern may be the inevitable consequence of the right to acquire territory. *Whichever may be the source from which the power is derived, the possession of it is unquestionable.*"

"The right to govern may be the inevitable consequence of the right to acquire territory,"—a very fair deduction, even in a naked case of unconditional acquisition. How much stronger where the acquisition is accompanied by an obligation to govern? where the territory and its inhabitants are received upon the condition that they shall be protected! protected in their persons, property, and religion! How was that to be done without government? This is the case with the Louisiana purchase; and the right to hold the territory, not only gives the right of government, but imposes the duty of government upon the new owner.

The present Supreme Court, in pronouncing its "Opinion," has noticed this decision of its predecessor, but with an argument to show that it was not a decision, and that the present Court is not bound by it. And it is right to give it the benefit of this argument; thus:—

"It is thus clear, from the whole opinion on this point, that the Court did not mean to decide whether the power was derived from the clause in the Constitution, or was the necessary consequence of the right

to acquire. They do decide that the power in Congress is unquestionable, and in this we entirely concur, and nothing will be found in this opinion to the contrary. The power stands firmly on the latter alternative put by the Court—that is, as '*the inevitable consequence of the right to acquire territory.*'

"And what still more clearly demonstrates that the Court did not mean to decide the question, but leave it open for future consideration, is the fact that the case was decided in the Circuit Court by Mr. Justice Johnson, and his decision was affirmed by the Supreme Court. His opinion at the circuit is given in full in a note to the case, and in that opinion he states, in explicit terms, that the clause of the Constitution applies only to the territory then within the limits of the United States, and not to Florida, which had been acquired by cession from Spain. This part of his opinion will be found in the note in page 517 of the report. But he does not dissent from the opinion of the Supreme Court; thereby showing that, in his judgment, as well as that of the Court, the case before them did not call for a decision on that particular point; and the Court abstained from deciding it. And in a part of its opinion subsequent to the passage we have quoted, where the Court speak of the legislative power of Congress in Florida, they still speak with the same reserve."

This is the argument of the present Court, to show the inapplicability of the Florida decision to the case before itself; and granting, for the sake of the argument, that Chief Justice Marshall leaves it doubtful from which source the power is derived, yet he says it is unquestionably possessed: and that is sufficient —for in either case the power is unlimited; and where there are two concurrent rights, the superior always takes effect, and the inferior is only cumulative. The sovereign derivation of the right is the highest, and is sufficiently affirmed by Chief Justice Marshall in the declaration of the inevitability of the right to govern what you have a right to hold. And this view is confirmed in another part of the same Florida decision, where the Chief Justice, speaking of the territorial courts, and of the right of Congress to establish such courts, with judges holding for a term of years instead of good behavior, he says:—

"They are legislative courts, created in virtue of the general right of sovereignty which exists in the Government, or in virtue of that clause which enables Congress to make all needful rules and regulations respecting the territory belonging to the United States."

This is enough—sufficiently explicit—to affirm the sovereign right of government in the owner of these Territories. But a member of the present Court, (Mr. Justice M'Lean,) differed from Chief Justice Taney in his estimate of this decision. He deemed it sufficiently clear in itself, and authorized by the point raised for the Court's decision. He says, (in his dissenting opinion :)—

"I can see no want of precision in the language of the Chief Justice; his meaning cannot be mistaken. He states, first, the third section as giving power to Congress to govern the Territories, and two other grounds from which the power may also be implied. The objection seems to be, that the Chief Justice did not say which of the grounds stated he considered the source of the power. He did not specifically state this, but he did say, 'whichever may be the source whence the power is derived, the possession of it is unquestioned.' No opinion of the Court could have been expressed with a stronger emphasis; "the power in Congress is unquestioned." But those who have undertaken to criticise the opinion, consider it without authority, because the Chief Justice did not designate specially the power. This is a singular objection. If the power be unquestioned, it can be a matter of no importance on which ground it is exercised. The opinion clearly was not *obiter dicta.* The turning point in the case was, whether Congress had power to authorize the territorial Legislature of Florida to pass the law under which the territorial court was established, whose decree was brought before this Court for revision. The power of Congress, therefore, was the point in issue."

I think Mr. Justice M'Lean entirely right in his understanding of the opinion delivered by Chief Justice Marshall; and I think that opinion clear in referring a right of governing a Territory to the right of acquiring it. And in this it corresponds with the action of Congress, and the declaration of eminent members at the time—namely, by Mr. Randolph, that the right of government was the right of sovereignty; and by Dr. Eustis, that the government of the Territory was imperiously commanded by its acquisition.

Strong as was the course of Congress in the act taking possession of Louisiana, and continuing therein the Spanish government under American officers, it was repeated, in all its extent, sixteen years afterwards, on the acquisition of Florida. The Louisiana act of October, 1803, was copied for Florida in

March, 1819. All the powers exercised there by the King's officers were to be exercised, until the end of the session of the next Congress, by such persons as the President should direct.* And thus, two different administrations, and two different Congresses, at the distance of sixteen years apart, governed two acquisitions of new territory exactly alike, and as incompatibly with our Constitution as a Spanish regal despotism is incompatible with our free Republican government. That act was approved by Mr. Monroe, and no dissenting voice was ever heard from his cabinet—able, vigilant, and strongly Southern as that cabinet was.

Following, step by step, the course pursued in the Louisiana case, a territorial government was afterwards provided there, but after an interval of four years—during all which time the Spanish government was continued over the people—General Jackson, the governor, took care that power should be no "barren sceptre" in his hands. This territorial government, established in March, 1823, took the ordinance of '87 for its basis, but with the modifications which assimilated it to the act for the government of the Orleans Territory. It was nearly a transcript from that act, so far as government was concerned; and we have seen what that was—a total abnegation of the Constitution of the United States in all its provisions, letter and spirit. So that, in these two first instances of the acquisition of foreign territory—Florida and Louisiana—two different administrations, and three different Congresses—those of 1803–'4, of 1818–'19, and of 1822–'3—at intervals of sixteen years and twenty years apart, acted in the same way, governing the Territories independently of the Constitution, and incompatibly

* The following was the act:

Sec. 2. *And be it further enacted*, That, until the end of the first session of the next Congress, unless provision for the temporary government of said territories be sooner made by Congress, all the military, civil, and judicial powers, exercised by the officers of the existing government of the same territories, shall be vested in such person and persons, and shall be exercised in such manner, as the President of the United States shall direct, for the maintaining the inhabitants of said territories in the free enjoyment of their liberty, property and religion; and the laws of the United States, relative to the collection of revenue, and the importation of persons of color, shall be extended to the said territories.

☞ Up to this time no one thought of extending the Constitution to a Territory: laws only were so extended, and only the few deemed applicable.

with it. Both these acts for the government of Florida passed under the administration of Mr. Monroe—Mr. John Quincy Adams, Secretary of State; Mr. Wm. H. Crawford, Secretary of the Treasury; Mr. John C. Calhoun, Secretary at War; Mr. Smith Thompson, Secretary of the Navy; Mr. Return Jonathan Meigs, Post-Master General; Mr. Wirt, Attorney General: a President and cabinet inferior to none that ever appeared in this Union, and who saw no want of power in Congress to pass, or in themselves to approve, these forms of territorial government in which the whole spirit of our Constitution is ignored, and its written provisions either disregarded or flatly contradicted. And what were the two Houses of Congress at that time? Perhaps if the period of our legislative history was to be picked out when the national legislature appeared to the greatest advantage, it would be in that middle period of Mr. Monroe's administration, when the surviving great men of the first generation were still upon the stage, and the gigantic progeny of the second were mounting upon it. I came into Congress at that period, and such was the awe and reverence with which the Senate inspired me, that I sat there six years without opening my mouth on any subject outside of my own State. *O! si sic semper!* And yet this assemblage of the illustrious old, and not less illustrious young, are now, after almost forty years, to be considered as ignorant of the Constitution which they had helped to make, and were sworn to observe, and doing things which require to be repudiated.

The Supreme Court, in its elaborate opinion, has put itself to great labor to prove the territorial legislation of Congress to be incompatible with the Constitution:—most superfluous labor, as I conceive, there being no pretension on the part of Congress to be acting under the Constitution, and continued declarations, (as well as acts,) to the contrary—members continually supporting measures in Territories which they repulsed in States—as, for local objects of internal improvement, for banks, corporations. It can be said, and without allowing a single exception, that there has not been a member of either House, from the formation of the Government to the present day, who has not voted for these objects in Territories who would not vote for them in States, upon the avowed ground that the Constitution did not extend to Territories. I have seen all parties so vote—

the very strictest of the State Rights party. The proceedings of Congress are full of such votes, and of the remark, "*It is a Territory: the Constitution does not extend to it.*" And this finishes the second stage of this Historical and Legal Examination, comprising the governmental legislation of Congress upon these two new Territories—Louisiana and Florida—and showing that they were governed without limitations, and in the plenitude of sovereign right, qualified only by the conditions on which they were ceded.

THIRD STAGE OF THE EXAMINATION,—EMBRACING THE LEGISLATION ON THE MISSOURI COMPROMISE ACT.

III. It was at the session of 1818–'19 that the Missouri Territory, having been trained through the three grades of territorial government prescribed by the ordinance of '87, and being then in the third grade, and with a competent population, applied through her Territorial Legislature for an Act of Congress to enable her to hold a convention for the formation of a State Constitution, preparatory to the formal application for admission into the Union. The bill had been perfected, its details adjusted, and was upon its last reading, when a motion was made by Mr. James Tallmadge, of New York, to impose a restriction on the State in relation to slavery, to restrain her from the future admission of slavery within her borders. The motion gave rise to a vehement debate, which soon divided the House geographically, set the members on fire, and soon attained a height which threatened the Union with dissolution. As a sample, take a specimen of what passed between some members from the Free and the Slave States—thus:—

Mr. Scott, delegate from Missouri: "He would trouble the House no longer; he thanked them for the attention and indulgence already extended to him. But he desired to apprise gentlemen, before he sat down, that they were sowing the seeds of discord in this Union, by attempting to institute States with unequal privileges and unequal rights —that they were signing, sealing, and delivering their own death warrant—that the weapon they were so unjustly wielding against the people

of Missouri was a two-edged sword. From the cumulative nature of power, the day might come when the General Government might, in turn, undertake to dictate to them on questions of internal policy. Missouri, now young and feeble, whose fate and murmurs would excite but little alarm or sensibility, might become an easy victim to motives of policy, party zeal, or mistaken ideas of power; but other times and other men would succeed: a future Congress might come, who, under the sanctified forms of Constitutional power, would dictate to them odious conditions—nay, inflict on their internal independence a wound more deep and dreadful than even this on Missouri. The House had seen the force of the precedent, in the mistaken application of the conditions imposed on the people of Louisiana anterior to their admission into the Union. And, whatever might be the ultimate determination of the House, he considered this question big with the fate of Cæsar and of Rome."

To this Mr. Tallmadge replied:

"The honorable gentleman from Missouri, who has just resumed his seat, has told us of the Ides of March, and cautioned us to beware of the fate of Cæsar and of Rome. Another gentleman, Mr. Cobb, from Georgia,* in addition to other expressions of great warmth, has said, that if we persist, the Union will be dissolved; and, with a look fixed on me, has told us that we have kindled a fire which all the waters of the ocean cannot put out, and seas of blood can alone extinguish. Sir, language of this sort has no effect on me. My purpose is fixed; it is interwoven with my existence; its durability is limited with my life; it is a great and glorious cause, setting boundaries to a slavery the most cruel and debasing the world ever witnessed. It is the freedom of man—it is the cause of unredeemed and unregenerated human beings. Sir, if a dissolution of the Union must take place, let it be so! If civil war, which gentlemen so much threaten, must come, I can only say, let it come! My hold on life is probably as frail as that of any man who now hears me; but, while that hold lasts, it shall be devoted to the service of my country—to the freedom of man. If blood is necessary to extinguish any fire which I have assisted to kindle, I can assure gentlemen, while I regret the necessity, I shall not forbear to contribute my mite."

And this was the character of the debate on the second day after it opened!—so rapid was the conflagration of the passions,

* Thomas W. Cobb. His speech on this occasion is merely noted, not reported among the debates, as, in fact, but a small part of the speeches were at that day.

and the desperation of the resolves. To what height did they not rise in the two years that this exasperating controversy continued in Congress! inflamed all the while by the resolves of popular meetings and legislative assemblies—by newspaper publications—by popular harangues—and even by pulpit addresses.

The numerical force of the House was against Missouri, and the restriction was there incorporated into the bill by a vote of 87 to 76; but in the Senate the majority was the other way, and the restriction was struck out by a vote of 22 to 16. The House then adhered to its amendment: the Senate adhered to its rejection: and so the bill was lost between the two Houses. This was at the end of a short session—the sessions terminating in odd years—when the end of the third day of March is the termination of the session, and of the Congress. It would be nine months before Congress met again, and during that long interval the fire kindled in Congress must continue spreading—and did. It was in that period that the anxieties of patriots rose to the highest pitch—that the surviving founders of the Union began to feel as if they were hearing the death-knell of the Constitution. Many of them, withdrawn from public cares, tranquil at home, and happy in the belief of the long duration of their cherished work, were alarmed from their security, and gave vent to their misgivings in letters which found their way to the public eye. Among others, Mr. Madison, who, in the ensuing November, shortly before the inflamed Congress was to meet again—still more inflamed by contact of the members with their constituents—wrote that letter to Mr. Robert Walsh, of Philadelphia, which has been quoted in high places as his opinion against the Missouri Compromise: that letter, so quoted, in which the word "compromise" does not occur!—which was written four months before the Compromise was made! and every word of which shows that it was only applicable to the then impending and absorbing question of the restriction on the State. To complicate the question, and render it still more difficult of settlement, was the attitude beginning to be assumed by Missouri. She had asked Congress for an enabling act to facilitate the holding of a State Convention. It was deferential to Congress to do so, but not imperative; and being denied, except on a degrading condition, the young Territory saw her

right under the treaty with France, the principles of the Government, and the ordinance of '87, to assemble in Convention, form their Constitution, see that it was republican, lay it before Congress, and stand the question of its rejection, because it did not exclude slavery. There was a short way for her to surmount the difficulty—to put in a prohibition, to satisfy Congress, and strike it out when the Constitution came back, to satisfy herself. There could be no legal objection to that course; but there was an objection to it of morality and of policy; it would be neither moral nor politic to do so; and the determination was, if again denied the enabling act, to erect herself into a State, ask admission into the Union, and throw upon Congress the entire responsibility of refusing to admit her. Such an attitude was impressing a new emphasis on the question, and portending a crisis of inevitable approach and fearful termination. Thinking men looked with apprehension to the next meeting of Congress; and, after it met—things continuing to grow worse until the Compromise came, with balm on its wings, to heal the wounds which the restriction had inflicted. But before I speak of this Compromise, and the patriotic men who made it, there is another measure to be spoken of, showing still more strongly the dangers of the country, enhancing still higher its merits, and illustrating still more fully the constitutional distinction between States and Territories. This was the Arkansas question—the question of restricting the Territory of Arkansas in the article of slavery—a question still more startling than that of Missouri, and equally portentous at the time, but overshadowed in the greater magnitude and longer duration than the other; equally deserving of public attention, but, in the impossibility of public access to the past Congress debates, now unknown to the public. The forthcoming abridgment of these debates will make them accessible.

The case was this: On fixing the boundaries for the new State of Missouri, it became necessary to curtail her limits, before co-extensive with the whole province of Louisiana outside of the State of Louisiana. On the southern side of the new State the Territory of Arkansas was to be cut off, and formed into a new Territory. It extended from the southern limit of Missouri—36° 30′—to the Louisiana State line, and to the Texas, or Mexican boundary; in fine, to all the territory south of Mis-

souri. To this southern Territory, thus appurtenant to the South—in the latitude of its staple productions—and with a slaveholding population upon it—was proposed to attach the slavery prohibition. Cotemporaneously with the report of the bill to enable Missouri to take steps for the formation of a State government, was another reported for the erection of the Territory south of it into a new territorial government—Arkansas by name, as covering that river. And as soon as the attempt had succeeded in the House to impose the slavery restriction on the State of Missouri, the same attempt was made to impose it on the Territory of Arkansas. Mr. John W. Taylor, of New York, made the motion.* This motion gave rise to an extended debate, in which the ablest speakers in the House, from both sides, took part; and which is more applicable, and authoritative, than any other debate that ever took place in Congress, to the question now under examination, *to wit:* the power of Congress over its territory, (and new territory at that;) and its right to legislate upon slavery in it, and to admit or reject it as deemed proper. The Arkansas question is the master one for this examination; for it presents the territorial question alone, uninfluenced by any consideration connected with a State; and because it applied to a territory so far south; and which was, so far as the admission or rejection of slavery was concerned, the entire province of Louisiana; for, if the institution was excluded from that southern part, it would recoil from the rest of itself. It was, therefore, a question to excite the slave States still more than the Missouri question had done, and to stimulate them to the use of the strongest objections against it. The strongest would have been unconstitutionality! yet no one took that objection. Expedient grounds, and the treaty of cession, were the highest grounds they took; and there were able men in the Government then—both in the Senate and the House, and in the Cabinet. These able men, and zealous for the South, and stimulated to the highest exertions, took no ground under the Constitution! On the contrary, they admitted the constitutional right of Congress to do as it deemed right on the question,

* It was in these words: "That the further introduction of slavery, or involuntary servitude, be prohibited, except for the punishment of crimes, whereof the party shall have been duly convicted. And that all children born within the State after the admission thereof into the Union, shall be free at the age of twenty-five years.

and limited their opposition to expedient objections. Among these was Mr. Louis M'Lane, of Delaware, an able and zealous defender of the rights and interests of the slave States, though opposed to the institution of slavery, and who was one of the first to reply to Mr. Taylor's proposition to restrict the Territory —repulsing it on expedient grounds, and making the first suggestion of a policy which afterwards ripened into the Missouri Compromise. He said:

"He would yield to no gentleman in the House in his love of freedom, or in its abhorrence of slavery in its mildest form. His earliest education, and the habits of his life, were opposed to the holding of slaves and the encouragement of slavery. At the same time, he would yield to no gentleman in the House in his regard for the Constitution of his country, and for the peace, safety, and preservation of the Union of these States. To these great objects all minor considerations should give way. Beyond this, the oath he had taken, as a member of the House, forbade him to go. The fixing of a line on the west of the Mississippi, north of which slavery should not be tolerated, had always been with him a favorite policy, and he hoped the day was not far distant when, upon principles of fair compromise, it might constitutionally be effected. He was apprehensive, however, that the present premature attempt, and the feelings it had elicited, would interpose new and almost insuperable obstacles to the attainment of the end."

In the concluding part of his speech, Mr. M'Lane returned to the idea of dividing Louisiana between the Free and the Slave States—enforced it by referring to the happy effects in promoting the formation of the Union, of a similar division under the ordinance of '87—and showed that Southern and Western members had already avowed the same policy. Thus:—

"On the whole, it seems to me that we have no right to impose this restriction; and that, if we had, it would be useless, impracticable, and unavailing. At the same time, I do not mean to abandon the policy to which I alluded in the commencement of my remarks. I think it but fair that both sections of the Union should be accommodated on this subject, with regard to which so much feeling has been manifested. The same great motives of policy which reconciled and harmonized the jarring and discordant elements of our system, originally, and which enabled the framers of our Constitution to compromise the different interests which then prevailed on this and other subjects, if properly cherished

by us, will enable us to achieve similar objects. If we meet upon principles of reciprocity, we cannot fail to do justice to all. It has already been avowed by gentlemen on this floor, from the South and the West, that they will agree upon a line which shall divide the slaveholding from the non-slaveholding States. It is this proposition I am anxious to effect; but I wish to effect it by some compact which shall be binding upon all parties and all subsequent legislatures—which cannot be changed, and will not fluctuate with the diversity of feeling and of sentiment to which this empire in its march must be destined. There is a vast and immense tract of country west of the Mississippi yet to be settled, and intimately connected with the northern section of the Union, upon which this compromise can be effected. Believing as I do that the Constitution and the compact* before mentioned will not permit us to extend our policy over the whole, I will be very willing to take as great a part as I can obtain; and in so doing, though I may lament that the humane policy of those who are so anxious to effect this end cannot be more widely diffused, I shall enjoy at least the consciousness of having conformed to the Constitution of the country, and executed the national compacts in good faith."

Mr. M'Lane was from a slave-holding State, and acting with the South—I should rather say with the Union—on this occasion. He was of course in communion with the Southern and Western members, but only spoke of avowals on the floor when he alluded to their readiness for a fair compromise on the principles of the ordinance of '87. Several of those members spoke—Mr. Clay and George Robertson, of Kentucky; Messrs. Hugh Nelson, James Johnson, John Tyler, and Philip P. Barbour, of Virginia—but their speeches are not reported, only noted. The authority of Mr. M'Lane, however, is sufficient for the fact which stamps the Compromise, (for into that measure the suggestions of Mr. M'Lane eventually ripened,) as a Southern measure, conceived and shadowed forth, and afterwards embodied as such; and also shows it to have been a deliberate and considered measure—meditated for upwards of a year before it was adopted.

The vote was taken on Mr. Taylor's proposition, the first clause of it to restrict the Territory, and it was handsomely rejected—68 to 80—in Committee of the Whole, where there are

* The stipulations in the treaty of cession on which the province was ceded, and which constituted a compact with France.

no yeas and nays; many of the northern members voting with the slave-State members, who were in an absolute minority of the House. But when the same vote came to be repeated in the House, where there are yeas and nays, it was as near even as could be to miss it—70 to 71—the proposition being only rejected by one vote; a difference in the voting which showed many free-State members to be, in their private feelings and judgment, what they could not openly show themselves to be. But Mr. Taylor's proposition consisted of two parts: the first prohibiting the future introduction of slaves into the Territory; the second acting upon those already there, and emancipating the slave children born there, at the age of twenty-five years; and this part of the proposition was carried—a close vote, 75 to 73—and Mr. Lewis Williams, of North Carolina, being one of the seventy-five. His name being low down in the alphabetical order, and the vote so close as to raise the apprehension that the clause would be carried, he voted with the affirmatives, that, being one of the majority, he would have the right to move a reconsideration, which he immediately did, and lost it by two votes, some members having come in. It was a mistake in him; for his vote, taken from the affirmatives, and given to the negatives, would have made the two stand 74, 74; and the supporters of the proposition holding the affirmative of the question, and not getting a majority, would be defeated, and that without the casting vote of the Speaker, which is only effective when he votes with the affirmatives; and in this case, he would go with the negatives. The case now looked desperate. To emancipate the slave children born in Arkansas, was equivalent to saying none such should be born there, or that they should be carried away before arriving at the liberating age. To do this in Arkansas was equivalent to doing it in all Louisiana, as Arkansas covered the southern half of the province; and excluded from there it would stand no chance to go north. It was more extensive in its effects than the Missouri State restriction, and more odious to the slaveholding States, because further south. The question would immediately come up again upon the engrossment of the bill, and ordering it to be read a third time. The exigency called for the cool judgment, the urbane deportment, and captivating address, of Mr. Lowndes; and he answered the call. Consulting a moment with some friends, Mr.

Scott, of Missouri, Mr. Weldon N. Edwards, of North Carolina, and Messrs. Colston and Pindall, of Virginia, he took his course, and moved that the bill be laid upon the table—saying, at the same time, that to prevent surprise, and ensure a full vote, he would himself move a call of the House the next day, at twelve o'clock, and then immediately take the final vote. All the Northern members whose feelings were with the South, immediately called out "that is fair!" and the bill was laid upon the table by a good vote.

This was a respite for the night, and an occasion for anxious consultation. The course agreed upon was a decided one—that a motion to recommit the bill to a select committee, with instructions to strike out the emancipation clause, should be made; and that Mr. George Robertson, of Kentucky, the reporter of the bill, should make the motion. He made it. The vote was even—88 to 88—and the motion lost, except for the casting vote of the Speaker, (Mr. Clay,) which was promptly given, and the bill re-committed, with the instruction. The select committee was Mr. George Robertson, of Kentucky, Mr. Lowndes, of South Carolina, Messrs. Nathaniel Silsbee and Elijah H. Mills, of Massachusetts, and Mr. William H. Burwell, of Virginia. The instruction was quickly complied with, and the bill returned to the House, when the question was to concur with the committee in the striking out which they reported. The vote was—89 for the concurrence; 87 against it. So that the question was carried by a majority of two, which was only a difference of one man. But the struggle was not yet over. Mr. Taylor continued his anti-slavery motions, which were finally modified into the following:

"That neither slavery nor involuntary servitude shall hereafter be introduced into any part of the territories of the United States, lying north of 36 degrees and 30 minutes of north latitude."

This was not the subsequent famous Missouri Compromise; for that compromise left out the State of Missouri, and this included it. It was, in fact, the continuation of the line which divides Virginia from North Carolina, and Kentucky from Tennessee; and which would cross the Mississippi and continue to the Rocky Mountains, without any deflexion. Mr. Philip P. Barbour, of Virginia, replied to this proposition. He said:

"He was opposed to Mr. Taylor's amendment, and to all others of similar character. He spoke with much earnestness against the proposition, and at some length, as partial and inexpedient—arguing that if the principle was wrong in itself, it ought not to be withheld from one part of the Territory and applied to another: that it was legislating partially by applying a rule to the one portion, and a different rule to another portion of citizens having equal rights under similar circumstances. If the rule was wrong at the 25th degree of latitude, it was equally so at the 40th. He argued that it was as impolitic as it was unjust, to draw this line. It was proper to let a future Congress act on it, as it should then seem expedient; and this opinion, as well as others which he advanced, he maintained at some length."

Such was the reply of Mr. Barbour, one of the ablest lawyers, one of the closest adherents of State rights, and of constitutional strict construction, which the Virginia school of 1798–'99 produced. He saw much wrong in Mr. Taylor's proposition—all the injury that is now seen in preventing slaveholders in restraining southern emigration—but no violation of the Constitution; and he was afterwards a justice of the Supreme Court of the United States, and died as such. His objections rose no higher than to the class of inexpedient, and several members concurred with him. The discussion became heated; some Northern members showed themselves indisposed to it; and Mr. Taylor, seeing more opposition than he had expected, withdrew his proposition, saying it was not probable any line would be agreed upon by the House, or any compromise of opinion effected. The bill was then read a third time—sent to the Senate for concurrence—concurred in there; and Arkansas became a separate Territory, free from slavery restriction.

I have deemed it right to give this detailed account of the attempt to exclude slavery from Arkansas; and to show by what narrow chances that attempt was defeated. It shows more clearly than any thing else—more clearly than the Missouri controversy itself—the danger which beset the Union at that time, and greatly enhances the merits of that compromise, which, a year afterwards, averted that danger. It also shows the first germination of the idea of that compromise—that it came from Mr. Louis M'Lane, with the sanction of Southern members, and took the compromise line in the ordinance of '87 for its guide and model.

I return to the Missouri bill, and to the movements of which it continued to be the subject in the two Houses. The session of 1818–'19, had terminated, leaving the bill lost in the disagreement of the two Houses. It was the short session, terminating the 3d of March; the long recess of nine months to intervene before Congress met again; and, in the mean time, the question becoming more aggravated and inflamed from the daily inflammatory appeals to the public mind: popular meetings, harangues, newspaper publications, denunciations, violent resolves. By the time Congress met in December, the whole country was aroused, the geographical line fully developed, and the two halves of the Union arrayed against each other. Things were far worse than at the end of the last session. Public opinion at home, and town-meeting resolves, were bearing down the moderate members from the free States who opposed the restriction, or even favored compromise. At the same time the Territory of Missouri had taken its stand—determined not to be restricted; and it was well known that the slave States would stand by her in a body. So dark an hour had never been seen for the Union as at the commencement of this session —1819–'20; and that darkness continued to deepen during three agonizing months. It was during this time that the whole country became convulsed, and patriots disheartened, and when many of them, in letters now extant, gave vent to their misgivings and despair. It was during this time that Mr. Madison wrote that letter, in reply to Mr. Walsh, wholly directed against restricting the State of Missouri, which has been so strongly applied to the compromise—not then broached. And it was during this time that our Congress, profoundly penetrated with a sense of the public danger, exhibited all the varieties of fervid and patriotic eloquence—close reasoning, calm argument, impassioned declamation, gorgeous elocution: and all with the impressive earnestness of a real contest involving the fate of the country. And it was now that Pinkney, of Maryland, delivered that great speech which consummated his oratorical fame, and which was worthy to call forth all his powers; for he was speaking of that Union which patriot heroes had formed, and which it now required patriot heroes to save.

In this state of the public mind Congress met, December, 1819. Bills to enable the Territory of Missouri to hold a con-

vention to form a State government, were early introduced into each House; and the friends of compromise in the free States, who were still able to follow their inclinations, were vigilant and ready, and preoccupied the ground with their conciliatory propositions. Mr. Storrs, of New York, always respectable and sometimes grand in debate, and well disposed to do justice to the South, offered a proposition upon the basis of dividing the whole territory about equally between the two classes of States; but he proposed the parallel of 38 degrees—which would not suit the friends of Missouri, and came to nothing. Mr. Thomas, of the Senate, from Illinois, also friendly to the slave States, proposed a compromise upon the same principle, but on a different line—36° 30′, exclusive of Missouri: being the same that was eventually adopted. Each House had a bill of its own, and both were at work on the same subject, at the same time: for, in fact, nothing else could be attended to in Congress, nor talked of in the country. The friends of compromise had taken the advance in each House; but their pacific propositions were quickly superseded, and lost sight of, by the introduction of others of a different character. Mr. Burrill, of Rhode Island, in the Senate, and Mr. John W. Taylor, of New York, in the House, respectively proposed the imposition of the restriction upon the State of Missouri; and, from that time, a long interval before conciliatory measures could be admitted to any attention. It was the 17th of February before a vote was obtained in the Senate on Mr. Thomas's amendment—when it was carried by a vote of 34 to 10. But this vote included several Senators who would not vote for the bill when so amended; so that, on ordering the bill to a third reading, the vote was 24 to 20. Thus, in the Senate the bill stood as the friends of Missouri wished it; to wit: the restriction rejected, and the compromise accepted. But this bill would stand no chance in the House in a trial of strength there: address and management alone could save her: and there was room for something to be done in that way. Massachusetts had divided herself to form the State of Maine: it was determined in the Senate to unite the two, (Missouri and Maine,) and keep them together: that was one hold upon the House. Then there was another. The Missouri restriction bill, passed by the House, would come to the Senate for concurrence; it was determined there to amend it by

striking out the restriction, and inserting the Thomas Compromise; and that was a second hold upon that body; and both were firmly seized. Missouri and Maine, for their admission, were put into one bill, and would go down to the House, united —to sink or swim together. The Missouri House bill would carry back the compromise, in place of the restriction which it brought up; and thus, address and management, laying hold of coincident circumstances, were working well for the settlement of the question, and for the harmony and preservation of the Union. It was the second of March when the vote was obtained on the bill with Mr. Thomas's amendment, and when it was carried by a vote of almost two to one—27 to 15.* All these affirmative votes affirmed the constitutionality, and the expediency of the compromise; and it was an imposing list of names. The whole negative vote affirmed the same constitutionality; for it was given on the principle of total exclusion of slavery from the whole province of Louisiana.

The question was now in the House, and the restriction on the State having been greatly debated, and the two Houses become mutually impeded by the state of their respective bills —for, while each could check the other, neither could carry its own — some of the most strenuous of the restrictionists had begun to relax, and to hold the language of conciliation, and to propose the application of the restriction to Territories alone. In this sense Mr. John W. Taylor spoke, and acted, and took the initiative for his party. (It was on the 14th of December, 1819.) He said:

"He rose to invite the attention of the House to a subject of very great moment. The question of slavery in the territories of the United States west of the Mississippi, it was well known, had at the last session of Congress excited feelings, both in the House and out of it, the recur-

* The detail of the affirmative vote was: Messrs. James Barbour, of Vir.; James Brown, of Lou.; Eaton, of Tenn.; Ninian Edwards, of Ill.; John Elliott, of Geo., Gaillard, of S. C.; Horsay, of Del.; William Hunter, of R. I.; R. M. Johnson, of Ken.; Henry Johnson, of Lou.; William Rufus King, of Ala.; James Lanman, of Conn.; Walter Leake, of Mppi.; Edward Lloyd, of Md.; William Logan, of Ken.; Nathaniel Macon, of N. C.; John F. Parrott, of N. H.; William Pinkney, of Md.; James Pleasants, of Vir.; William Smith, of S. C.; Montford Stokes, of N. C.; Jesse B. Thomas, of Ill.; Nicholas Van Dyke, of Del.; John W. Walker, of Ala.; Freeman Walker, of Geo.; Thomas H. Williams, of Mppi.; and John Williams, of Tenn.

rence of which he sincerely deprecated. All who love our country, and consider the Union of these States as the ark of its safety, must view with deep regret sectional interests agitating our national councils. He could not himself, nor would he ask others, to make a sacrifice of principle to expediency. He could never sanction the existence of slavery where it could be excluded, consistently with the Constitution and public faith. But it ought not to be forgotten that the American family is composed of many members: if their interests are various, they must mutually be respected; if their prejudices are strong, they must be treated with forbearance. He did not know whether conciliation was practicable, but he considered the attainment worthy of an effort. He was desirous that the question should be settled in that spirit of amity and brotherly love, which carried us through the perils of the Revolution, and produced the adoption of our Federal Constitution. If the resolution he was about to introduce should be sanctioned by the House, it was his purpose to move a postponement of the Missouri bill to a future day, that this interesting subject, in relation to the whole Western Territory, may be submitted to the consideration of a committee."

Mr. Taylor then introduced the following resolution:—

"*Resolved*, That a Committee be appointed to inquire into the expediency of prohibiting by law the introduction of slaves into the Territories of the United States west of the Mississippi."

This resolution, limited to Territories, and presented as a feeler to compromise, was received in the spirit in which it was made—as a proposition for a compromise; and, therefore, to be kindly entertained. But it was not adopted in haste, but, on the motion of Mr. Strother, of Virginia, laid upon the table until the next day, "to give time for reflection." The next day it was taken up, and, as the result of the night's reflection was adopted the next day, without debate, and, without division! a strong symptom that no one in the House, at that time, saw any thing unconstitutional in legislating upon slavery in Territories. A committee of seven was appointed:—Messrs. JohnW. Taylor; Livermore, of N. H.; P. P. Barbour, of Virginia; Lowndes; Fuller, of Mass.; Hardin, of Kentucky; Cuthbert, of Georgia. The committee could not agree upon a plan, and would not report a mere majority proposition as a basis of compromise; and, upon their own request, were discharged from the consideration of the

subject. Mr. Taylor then introduced a peremptory resolution, that a committee be appointed, with instructions to bring in a bill prohibiting the further admission of slaves into the Territories of the United States west of the river Mississippi. In commendation of this resolution, Mr. Taylor made the following remarkable declaration:—"*He believed there was no member—he knew of none—who doubted the Constitutional power of Congress to impose such a restriction on the Territories; and the only question which the bill could present was one of expediency.*" This was a remarkable declaration, addressing itself to every member of the House, and calling for immediate rectification, if there was any mistake in it. There was no remark made upon it, one way or the other. The declaration of Mr. Taylor must then be taken to be true—that there was not a member of the House who did not hold that Congress had the right to abolish slavery in the Territories. Other parts of the resolution were remarked upon; and, without being acted upon, it went to its place on the calendar, not to be reached until after the Missouri bill should be disposed of, and in the adjustment of which the Southern and Western members preferred that the territorial question should be settled.

This was the 27th of December. It was a month afterwards —just a month (26th January)—before the subject was mentioned again, when it came up on a motion from Mr. Storrs, of New York, to amend the bill, (that of the House,) by inserting a compromise clause—nearly the same which afterwards came down from the Senate. It was on stating his understanding of the effect of that motion, that General Smith of Maryland declared the power of Congress to be unlimited and supreme in the Territories—a declaration which no one impugned. These were his words—all that he said on the point:—

"He rose principally with a view to state his understanding of the proposed amendment; viz.:—That it retained the boundaries of Missouri, as delineated in the bill—that it prohibited the admission of slaves west of the west line of Missouri, and north of the north line—that it did not interfere with the Territory of Arkansas, or the uninhabited land west thereof. With this understanding, he thought the proposition not exceptionable, but doubted the propriety of its forming a part of this bill. He considered the power of Congress over the Territory as supreme, unlimited, before the admission—that Congress could

bestow on its Territories any restrictions that it thought proper, and the people, when they settled therein, did so under a knowledge of the restriction."

Now, General Smith was not a lawyer, but he was a man of vigorous common sense, of close business habits, of a thinking turn of mind, and large political and legislative experience—having been in Congress from the beginning of Washington's administration. The opinion of such a man, upon the legislative powers of Congress, is always something, and in this case his opinion was weighty—for it was decisive, and no one impugned it.

There was, in fact, no question raised on the point of power; no one disputed it, and no one argued it; but, from time to time, different members expressed their opinions, chiefly in illustration of the difference between States and Territories, and the power of Congress over them, or in elucidation of clauses in the Constitution. Thus Mr. M'Lane, of Delaware:—

"No little reliance has been placed by the honorable mover upon the clause in the Constitution, vesting in Congress a power to dispose of, and make all needful rules and regulations respecting the territory, or other property of the United States. I do not propose to enter minutely into the inquiry, whether the power of Congress to establish a Territorial Government is derived from this clause. I incline to the opinion that it is not. The power here conferred is a power to dispose of, and make needful rules respecting the property of the United States. It was designed, I think, to authorize the sale of the land for purposes of revenue, and all regulations which might be deemed necessary for its proper disposition; or to convert it to other public objects disconnected with sale or revenue—to retain this power even after the territory had assumed the State government, and perhaps to divert from the State government the right of taxing it, as it would do the property of individuals. It is silent as to the people; and their slaves are the property of their owners, and not of the government. The right of governing a Territory is clearly incident to the right of acquiring it. It would be absurd to say that the government might purchase a Territory, with a population upon it, and not have the power to give them laws: but from whatever source the power is derived, I admit it to be plenary, so long as it continues in a state of territorial dependence, but no longer. I am willing at any time to execute this power. The condition of the people of a Territory is, to be governed by others—of a State, to govern themselves."

So spoke Mr. M'Lane, a lawyer, and one of the ablest men in Congress. In that part of his understanding, of the "needful rules and regulation" clause, he is coincident with the late Opinion of the Supreme Court, but diametrically opposed to them in the derivation of the power of Congress over Territories—they construing it, generally, out of the Constitution—he deriving it direct from sovereignty and ownership. And in his whole opinion of this power as being plenary and absolute, whether derived from sovereignty, or from the quoted clause in the Constitution, he so entirely coincides with the former opinions of the Supreme Court as twice delivered by Chief Justice Marshall, (heretofore quoted,) that it would be held to be a repetition of those decisions were it not for the fact that it was before them.

Nearly to the same effect was the opinion of General Alexander Smyth, of Virginia, and one of the best legal and most investigating minds in Virginia, and who, in the progress of the Missouri Bill, expressed himself thus:—

"It has been contended that this clause (the needful rules and regulation clause) gives a power of legislation over persons and private property within the Territories of the United States. The clause obviously relates to the territory belonging to the United States as property only. The power given is to dispose of, and make all needful regulations respecting the territorial property, or other property of the United States, and Congress have power to pass all laws necessary and proper to the exercise of that power. This clause speaks of the territory as property, as a subject of sale. *It speaks not of the jurisdiction. That the Convention considered sufficiently provided for by the Ordinance of Congress.* This clause contains no grant of power to legislate over persons and private property within a Territory. A power to dispose of, and make all needful regulations respecting the property of the United States, is very different from a power to legislate over the persons and property of the citizens. When it was the intention of the Convention that the Constitution should convey to Congress power to legislate over persons and private property, they expressed themselves in terms not doubtful. Thus, they said, Congress shall have power to exercise exclusive legislation in all cases whatsoever within the ten miles square. But no such power to legislate over the Territories is granted."

Mr. Smyth is very distinct in his exposition of the meaning of this clause—the needful rules and regulation clause. He

considers that clause as only applying to the management of property, and that limited to the property of the United States. He considers it no grant of the jurisdiction or right of government: that, *to wit*, jurisdiction and government, being provided for by the Ordinance. This is historically, as well as logically true. The Ordinance and the Constitution were each parts, and essential parts of the same system—made at the same time, by the same men, (it may be said,) and for the same purpose, that of founding and settling the Union. Each was necessary—the Ordinance for the government of the Territories; the Constitution for the government of the States. It was necessary to settle the political condition of the Territories, and the Ordinance was their Constitution. It framed their Governments, and the Constitution had nothing to do with them. This is what Mr. Smyth means, and what history, and the obvious meaning of language, justifies him in saying, *to wit*, that the needful rule and regulation clause did not confer jurisdiction, and give the right of government to the Territories, *because that had been provided for by the Ordinance.* The Ordinance was made for the Territory of the United States, then in possession or expectation. It was not made under the Articles of Confederation, for there was no authority in those articles to make it; it was not made under the Constitution, for it was made before it. By what authority, then, was it made? By right of ownership, both of soil and jurisdiction, and by virtue of the compacts with the ceding States; and the new Territory is governed in the same way—not by virtue of any thing in the Constitution, but by virtue of proprietary rights of soil and jurisdiction—as an incident to its acquisition—and by virtue of the compacts with France in the treaty of the cession. And this is what Mr. Smyth says in this most pregnant passage of his. A right to use the soil as property, and to govern the people politically, until prepared to govern themselves, necessarily resulted from these premises; and the right of government was full and complete, limited only by the compacts and the treaty. The ordinance of '87 compromised the slavery question in Territories by dividing them about equally between the free and the slave States; the Congress of 1820 had the same right to compromise, and were under the same inducement to do so; and did it. I say the same inducement, and mean what I say; for the com-

promise of '87 made the Union, and the compromise of 1820 saved it.

I hasten to the actual compromise.

The debate in the House was upon the restriction of the State of Missouri, moved by Mr. John W. Taylor, and most bitterly contested. It was not until the last day of February that the vote was obtained on the motion of Mr. Taylor, and that it was carried by 94 to 86; and the bill was passed the next day by a vote nearly the same. In the mean time the bill for the admission of Maine had returned from the Senate, with the Missouri bill attached to it, and embracing the compromise proposition moved by Mr. Thomas. The House promptly disagreed to these amendments, and a committee of conference was appointed, which came in with a compromise proposition—that the Senate should recede from their amendment adding Missouri to Maine, and the House give up the restriction, and take the compromise in its place. Pending this conference, the Missouri House bill returned from the Senate with the restrictions struck out, and the compromise inserted—the same which Mr. Storrs offered in the House, and Mr. Thomas in the Senate. The compromise was then in both bills—the one from the Senate, and the one from the House; and the struggle became close and intense,—on one side, to strike out the compromise—on the other to retain it; for that question included in its result the fate of the bill, and with it the fate of the Union. The esteemed Mr. Lowndes, always listened to with deference by the House, was the first to speak, and earnestly for the compromise; but the reported debates only give briefly the points of his speech, thus:—

"Mr. Lowndes spoke briefly in support of the compromise recommended by the Committee of Conference, and urged with great earnestness the propriety of a decision which would restore tranquillity to the country; which was demanded by every consideration of discretion, of moderation, of wisdom, and of virtue."

Mr. Kinsey, of New Jersey, a Free State member who had voted steadily through two sessions for the restriction, was too seriously impressed with the dangers of the country to continue that vote any longer. He determined to change his vote, and gave his reasons publicly for it. He said:—

"A period has now arrived when it becomes necessary to close this protracted debate, and, as I shall vote for the compromise offered by the Senate, it is proper to state my reasons for so doing. We have arrived at an awful period in the history of our empire, when it behooves every member of this House now to pause, and to consider that on the next step we take depends the fate of unborn millions. I firmly believe that on the question now before us rest the highest interests of the whole human family. Now, sir, is to be tested whether this grand and hitherto successful experiment of free government is to continue, or, after more than forty years' enjoyment of the choicest blessings of Heaven under its administration, we are to break asunder on a dispute about the division of territory. Gentlemen of the majority have treated the idea of a disunion with ridicule; but to my mind, it presents itself in all the horrid, gloomy features of reality: and when we unfold the volume of past ages, and, in the history of man, trace the rise and fall of governments, we find trifles, light as air compared to this, dissolving the most powerful confederacies, and overturning extensive empires. If we inquire what causes operated to destroy the Amphyctionic League, or dissolve the German Confederacy, in almost every case we find questions of territorial jurisdiction, and what, for ages, has deluged Europe in blood? disputes concerning territorial rights. On questions of this high and mighty import, it behooves us to make our approaches with the most awful consideration. What at this period is a matter of conjecture, may in a short time become real history. It is not a question like that heretofore, in which a diversity of opinion commingled in the same society where a division of sentiment, on subjects political, spread itself over the whole Union; but on this question the division is, not of individuals, but of States—and of States almost equally divided. And what is the case now before us? Opinions from which every gentleman, a few months past, would have recoiled with horror, as treason to imagine, are now unhesitatingly threatened. That which had no ideal existence, engendering as this discussion progresses, assumes a positive shape; and mixing with this unpropitious debate, presents itself in all the dreadful appearances of reality. May God, in mercy, inspire us with a conciliatory spirit, to disperse its fury and dispel its terrible consequences."

Other members from Free States, like Mr. Kinsey, changed their votes, and gave their reasons for doing so—among others, Mr. Stephens, of Connecticut. Thus:—

"If gentlemen are in favor of any compromise, it is a fit time to discuss that subject, and see if any can be hit on that will give general

satisfaction. We have now arrived at a point at which every gentleman agrees something must be done. A precipice lies before us, at which perdition is inevitable. Gentlemen on both sides of this question, and in both Houses, in doors and out of doors, have evinced a determination that augurs ill of the high destinies of this country! and who shall not tremble for the consequences? I do not pretend to say that, in just five calendar months your Union will be at an end; but I do say, and for the verity of the remark cite the lamentable history of our own time, that the result of a failure to compromise at this time, in the way now proposed, or in some other way satisfactory to both, would be to create ruthless hatred, irradicable jealousy, and a total forgetfulness of the ardor of patriotism, to which, as it has heretofore existed, we owe, under Providence, more solid, rational glory and social happiness, than ever before was possessed by any people, nation, kindred, or tongue, under Heaven."

Amidst such appeals the eventful question was called, and resulted 134 for the compromise to 42 against it—a majority of three to one, and eight over. Such a vote was a real compromise! a surrender on the part of the restrictionists, of strong feeling to a sense of duty to the country! a settlement of a distracting territorial question upon the basis of mutual concession, and according to the principles of the ordinance of 1787. Such a measure may appear on the statute book as a mere act of Congress; and lawyers may plead its repealability: but to those who were cotemporary with the event, and saw the sacrifice of feeling, or prejudice, which was made, and the loss of popularity incurred, and how great was the danger of the country from which it saved us, it becomes a national compact, founded on considerations higher than money: and which good faith and the harmony and stability of the Union deserved to be cherished next after the Constitution.

Of the 42 who voted against the compromise, there was not one who stated a constitutional objection: all that stated reasons for their votes, gave those of expediency—among others that it was an unequal division, which was true, but the fault of the South; for, while contending for their share in Louisiana, they were giving away nearly all below 36° 30′ to the King of Spain.* There being no tie, the speaker (Mr. Clay) could not

* Mr. Justice Catron notices this inequality of the division, and considers it a great aggravation of an aggressive measure:

"The Missouri Compromise line of 1820 was very aggressive: it declared that

vote; but his exertions were as zealous and active in support of it, as indispensable to the pacification of the country.

From Congress the bill went to the President for his approval; and there it underwent a scrutiny which brought out the sense both of the President and his cabinet upon the precise point which has received the condemnation of the Supreme Court, and exactly contrary to the Court's decision. There was a word in the restrictive clause which, taken by itself and without reference to its context, might be construed as extending the slavery prohibition beyond the territorial condition of the country to which it attached—might be understood to extend it to the State form. It was the word "forever." Mr. Monroe took the opinion of his cabinet upon the import of this word, dividing his inquiry into two questions—whether the word would apply the restriction to Territories after they became States? and whether Congress had a right to impose the restriction upon a Territory? Upon these two questions, the opinion of the cabinet was unanimous—negatively, on the first; affirmatively, on the other. These questions were put formally, and with a view to official and responsible answers. A separate, written interrogatory was addressed to each member of his cabinet, and a written answer required. These answers, so required, were received by the President, and by him delivered to his Secretary of State (Mr. John Quincy Adams) to be filed in the Department of State: and it is in full proof that they were so filed—though no longer to be found there. The opinions of the cabinet were unanimous, upon both points submitted to them; and that cabinet was a majority Southern, and the President himself a Southern man. Mr. Monroe was the President; Mr. Crawford, Secretary of the Treasury; Mr. Calhoun, Secretary at War; Mr. Wirt, Attorney General. And thus, all the branches of the legislative power—the President, the Senate,

---

slavery was abolished forever throughout a country reaching from the Mississippi River to the Pacific Ocean, stretching over thirty-two degrees of longitude, and twelve and a half degrees of latitude on its eastern side, sweeping over four-fifths, to say no more, of the original province of Louisiana."—*Mr. Justice Catron.*

The answer to this is, that the South made the treaty which gave away so much of Louisiana, but as it was all got back, and more too, before the abrogation of the Missouri Compromise Act, the inequality of the division could no longer be made a subject of regret.

and the House of Representatives—were of accord on the question of this compromise, both as it regards constitutionality and expediency: and it may be well said, the three branches were never abler than at that time. Mr. Monroe himself an experienced man, of sound judgment, and one of the fathers of the Constitution: his cabinet, admitted to be one of the strongest that we have ever had: the Senate, a solid body of able men—Pinkney, of Maryland, the orator and the jurist, the prominent and brilliant figure: in the House, a long list of eminent men, of whom Clay and Lowndes shone most conspicuous. And in that House, and in the thick array of its eminent men—themselves eminent—two, who, if Providence had spared their lives, might have prevented the condemnation of the compromise in the Supreme Court: I speak of Henry Baldwin, of Pennsylvania, and Philip P. Barbour, of Virginia —both members of the House at the time of the compromise —both supporting its constitutionality, (one by his speech, the other by his vote:) both afterwards Justices of the Supreme Court; and who could hardly be expected to change their old opinions thirty-seven years after they had acted so responsibly upon them. Upon the supposition of their continued life, and seats on the bench, and unchanged opinions, the decision of the Court might have deen different.

It is true, that in the year 1848, when the new dogma was invented of "No power in Congress to act upon slavery in a Territory," Mr. Calhoun forgot that he had supported the Missouri Compromise, and argued that he could not have done so; but it is equally true that ten years before, *to wit*, in 1838, he had not forgotten it; but remembered very well that he then supported the Compromise, and blamed Mr. Randolph for opposing it. It was at that period that Mr. Calhoun had occasion, in the Senate, to speak of that measure, and his course in relation to it, and did so in these words:—

"He was not a member of Congress when that compromise was made, but it is due to candor to state, that his impressions were in its favor; but it is equally due to it to say that, with his present experience and knowledge of the spirit which then, for the first time, began to disclose itself, (abolitionism,) he had entirely changed his opinion. He now believed that it was a dangerous measure, and that it has done

much to rouse into action the present spirit. Had it then been met with uncompromising opposition, such as a then distinguished and sagacious member from Virginia, (Mr. Randolph,) now no more, opposed to it, abolition might have been crushed forever in its birth. He then thought of Mr. Randolph as, he doubts not, many think of him now, who have not fully looked into the subject, that he was too unyielding—too uncompromising—too impracticable; but he had been taught his error, and took pleasure in acknowledging it." *

Thus, in 1838—eighteen years after the Compromise—Mr. Calhoun well remembered his support of it, and his blame of Mr. Randolph for not supporting it. He also remembered his change of opinion, and the reason for the change, namely, that it encouraged the abolitionists; and up to that time, (1838,) he had no constitutional objection to the Compromise—nothing but its tendency to encourage abolitionism. But it needed not this avowal of Mr. Calhoun to invalidate his subsequent forgetting so material a point. It was fully proved—1. By a letter from Mr. Monroe to General Jackson: 2. By the diary of Mr. Adams: 3. By the Index-book in the Department of State, referring to the filing of the Cabinet answers: 4. By traditionary history, which told of the Cabinet consultation, and that its opinion was unanimous.† It is a public loss and a mystery, that

* The occasion which drew these remarks from Mr. Calhoun was the introduction of his six famous resolutions of the session 1837–'38, laying down a code of slavery legislation for the District of Columbia and the Territories, all bottomed upon the constitutional right of Congress to legislate upon slavery in these places, but deprecating the exercise of the right by abolishing slavery either in the District or in a Territory where it existed by law, not as a breach of the Constitution but as a "*dangerous attack*" upon slavery in the States, and leading to the dissolution of the Union. The dogma of "No power in Congress to legislate upon slavery in Territories," had not then been invented, and owes its discovery to a period ten years later.

† Extract from Mr. Dix's speech, above referred to:

"The Senator from Florida (Mr. Westcott) read to the Senate yesterday the *facsimile* of an original paper found among the manuscripts of Mr. Monroe, and in his handwriting, by which it appears, that when the Missouri Compromise Act, as it is called, was passed, he took the opinions of the members of his Cabinet, in writing, in respect to the constitutionality of that act. The Senator from South Carolina (Mr. Calhoun) was one of the Cabinet; and as I took and endeavored to sustain, on a late occasion, the position that Congress possesses the right to prohibit slavery in the Territories of the United States, I am naturally desirous of fortifying it with all the authority I can command; and I shall be particularly gratified, if it shall be found that the distinguished Senator alluded to, though now denying the right, was then in favor of it. I will read to the Senate all of this paper which relates to the subject:

these Cabinet answers, so carefully obtained by Mr. Monroe, and intended to be preserved as an archive of the government in the Department of State, should have disappeared from that office. Many searches were made for them without effect—the last under General Taylor's administration, when Mr. John M. Clayton was Secretary of State; but nothing could be found but the Index entry of their filing, as stated by Mr. Adams in

---

(From Mr. Monroe's manuscripts.)—A paper endorsed "*Interrogatories, Missouri—March* 4, 1820.—*To the Heads of Departments and Attorney General.*"

Questions, (on opposite page:)

"Has Congress a right, under the powers vested in it by the Constitution, to make a regulation prohibiting slavery in a Territory?

"Is the eighth section of the act which passed both Houses on the 3d instant, for the admission of Missouri into the Union, consistent with the Constitution?"

With the above is the original draft of the following letter, in President Monroe's handwriting, on half a sheet of paper, but not endorsed or addressed to any one. There are interlineations, but the text, as left by the writer, is as follows:—

"DEAR SIR: The question which lately agitated Congress and the public has been settled, as you have seen, by the passage of an act for the admission of Missouri as a State, unrestrained, and Arkansas likewise, when it reaches maturity, and the establishment of the 36° 30′ north latitude as a line, north of which slavery is prohibited, and permitted to the south. I took the opinion, in writing, of the Administration as to the constitutionality of restraining Territories, [*and the vote of every member was unanimous and**] which was explicit in favor of it, and as it was that the 8th section of the act was applicable to Territories only, and not to States when they should be admitted into the Union. On this latter point I had at first some doubt; but the opinion of others, whose opinions were entitled to weight with me, supported by the sense in which it was viewed by all who voted on the subject in Congress, as will appear by the journals, satisfied me respecting it."

This letter has been supposed to have been written to General Jackson, though there is no evidence of the fact.

Mr. Calhoun: "If the Senator will give way, it will be perhaps better that I make a statement at once respecting this subject, as far as my recollection will serve me. During the whole period of Mr. Monroe's administration, I remember no occasion on which the members of his Administration gave written opinions. I have an impression—though not a very distinct one—that on one occasion they were required to give written opinions; but for some reason, not now recollected, the request was not carried into effect. He was decidedly opposed to the imposition of any restriction on the admission of Missouri into the Union, and I am strongly of the impression that he was opposed in feeling to what was called the Missouri Compromise."

Mr. Johnson, of Maryland: "Is this the original letter?"

Mr. Dix: "I understand it to be a *fac-simile* of the original. As a long period (nearly thirty years) has elapsed since the act to admit Missouri into the Union was passed, it is quite natural that the Senator from South Carolina should have forgotten the circumstances attending the discussion of it in the Cabinet. Having heard, some days ago, of the existence of such a paper, and being very desirous of ascertaining

his diary. This shows that Mr. Calhoun saw nothing unconstitutional in the Missouri Compromise in 1838: another senatorial act of his shows that he saw nothing unconstitutional in it in 1847, when he voted, in an amendment to the Oregon Territorial Bill, to extend the Compromise line to the Pacific Ocean—a thing not to be done, if the line was unconstitutional, and null and void.

---

the facts, I wrote to Mr. Charles F. Adams, of Boston, a son of the late ex-President, inquiring of him if his father's diary contained any thing on the subject. In reply to my inquiry, I received an extract from the diary of the father, certified by the son, which I will now read, and which confirms fully the statement contained in Mr. Monroe's letter:

Extracts from the Diary of J. Q. Adams.

"MARCH 3, 1820.—When I came this day to my office, I found there a note, requesting me to call at one o'clock at the President's house. It was then one, and I immediately went over. He expected that the two bills, for the admission of Maine and to enable Missouri to make a Constitution, would have been brought to him for his signature; and he had summoned *all* the members of the Administration to ask their opinions in writing, to be deposited in the Department of State, upon two questions: 1. Whether Congress had a constitutional right to prohibit slavery in a Territory? and 2, Whether the 8th section of the Missouri bill (which interdicts slavery *forever* in the Territory north of 36½ latitude) was applicable only to the territorial state, or would extend to it after it should become a State? As to the first question, it was *unanimously* agreed that Congress have the power to prohibit slavery in the Territories."

This is the first extract; and before I proceed to the others, I will state that, in respect to the second question, there was a diversity of opinion—Mr. Adams contending that a State would be bound by such a prohibition after its admission into the Union, and the other members of the Cabinet, that it was only operative during the territorial term. In order to secure unanimity in the answers, the second question was modified, as will appear by the remaining extracts, which I proceed to give:

"MARCH 5.—The President sent me yesterday the two questions in writing, upon which he desired to have answers in writing, to be deposited in the Department of State. He wrote me that it would be in time, if he should have the answers to-morrow. The first question is in general terms, as it was stated at the meeting on Friday. The second was modified to an inquiry, whether the 8th section of the Missouri bill is consistent with the Constitution. To this I can without hesitation answer, by a simple affirmative, and so after some reflection I concluded to answer both. * *

"MARCH 6. * * * I took to the President's my answer to his two constitutional questions, and he desired me to have them deposited in the Department, together with those of the other members of the Administration. They differed only as they assigned their reason for thinking the 8th section of the Missouri bill consistent with the Constitution, because they considered it as only applying to the territorial term; and I barely gave my opinion, without assigning for it any explanatory reason. The President signed the Missouri bill this morning."

These extracts are certified to be "a true copy from the original by me,

"CHARLES FRANCIS ADAMS."

It was at the conclusion of this eventful session (1819–'20), and in allusion to the momentous struggle through which the House had passed, and its happy termination, that Mr. Clay, in taking leave of the House, and in returning his acknowledgments for the vote of thanks received, after expressing his personal regrets at parting from so many friends, rose to a higher sentiment, and said:—

"But interesting as have been the relations in which I have stood, for many years, to this House, I have yet higher motives for continuing to behold it with the deepest solicitude. I shall regard it as the great depository of the most important powers of our excellent Constitution —as the watchful and faithful sentinel of the freedom of the people—as the fairest and truest image of their deliberate will and wishes; and, as that branch of the Government where—if our beloved country shall, unhappily, be destined to add another to the long list of melancholy examples of the loss of public liberty—we shall witness its last struggles and its expiring throes."

It was in the year 1820 that this great compromise was effected. Twenty-five years afterwards it received a re-enactment, and under circumstances the most impressive. It was in the year 1845, and on the occasion of the legislative admission of the State of Texas into the Union. In the previous year, annexation by treaty had been refused; legislation was held by many to be the indispensable basis to any incorporation; and, accordingly, that mode of annexation prevailed. Early in the session, 1844–'45, the last of Tyler's administration, a joint resolution was brought into the House of Representatives for the admission of that Republic as a State into the Union. It was in these words:—

"That Congress doth consent that the territory properly included within, and rightfully belonging to the Republic of Texas, may be erected into a new State, to be called the State of Texas, with a republican form of government, to be adopted by the people of said Republic, by deputies in convention assembled, with the consent of the existing Government, in order that the same may be admitted as one of the States of this Union; and that the foregoing consent of Congress is given upon the following conditions, and with the following guarantees:

"Article I." (Relates to settlement of boundaries.)

"Article II." (Relates to public property and vacant lands.)

"Article III. New States, of convenient size, not exceeding four in number, in addition to said State of Texas, and having sufficient population, may hereafter, by the consent of said State, be formed out of the territory thereof, which shall be entitled to admission under the provisions of the Federal Constitution. And such States as may be formed out of that portion of said Territory lying south of thirty-six degrees thirty minutes, north latitude, commonly called the Missouri Compromise line, shall be admitted into the Union, with or without slavery, as the people of each State asking may desire; and, in such State or States as shall be formed out of said Territory, north of said Missouri Compromise line, slavery, or involuntary servitude (except for crime), shall be prohibited."

Here is a complete re-enactment of the Missouri Compromise Act, and with such particularity that the line is both astronomically marked by its latitude—36 degrees 30 minutes—and also nominated, and twice nominated, by its popular descriptive appellation of "*the Missouri Compromise Line.*" It is a copy of the Compromise clause in the act of March 6th, 1820, copied to a word, except one, and that one word omitted is as significant of identification as any one of those employed. It is the word "forever," prefixed to prohibit. The Missouri Compromise of 1820 has it; the Texas Compromise of 1845 omits it, and not by accident, but for a reason, as well understood by all who were cotemporary with the event. It was that word which occasioned the cabinet consultation under Mr. Monroe—that word which raised the question whether the restriction would follow the Territory, and stick to it after it became a State? and on which all the cabinet of Mr. Monroe were required to give written opinions, to be filed in the Department of State, for perpetual reference. Mr. Calhoun was a member of Mr. Monroe's Cabinet at the time of the Missouri Compromise, and of Mr. Tyler's at the time of the Texas Compromise. As Secretary of State, he drew up the joint resolution for the admission of Texas, and, recollecting the trouble which the word "*forever*" had occasioned in one cabinet of which he was a member, he took care to prevent a like occurrence in another, of which he was head. This is the reason of the omission of that word; and its omission goes still further to identify the latter Compromise as the copy—copy in spirit as well as in words—of the former; and Mr. Calhoun its author, a fact other-

wise well known at the time. Among persons from the South it has become the vogue to decry the Missouri Compromise, and to prejudice it with the imputation of being a Northern measure, while its history shows the contrary; and being an event long since passed, and its history inaccessible to the community, many are persuaded to believe in the fable. But not so with the Texas Compromise; it is recent, the actors are still on the stage, and the witnesses alive; and there is no room for mistake, or deception, or misrepresentation, or misconception, about it. The event is of our own day, and the performers (most of them) still in being. It was done under a Southern administration—an administration not merely of the South, but ultra South; of the extreme South Carolina States' Rights school. Mr. John Tyler was President; Mr. Calhoun Secretary of State, with the ascendant in the cabinet which it is the prerogative of genius to take over inferior minds; and that cabinet was a unit for the measure. One hundred and twenty members of the House—a full majority, and nearly every Southern member—voted for it.* The negatives (97 in number) were

* Their names are: Messrs. Archibald H. Arrington, John B. Ashe, Archibald Atkinson, Thomas H. Bailey, James E. Belser, Benjamin A. Bidlack, Edward J. Black, James Black, James A. Black, Julius W. Rockwell, Gustavus M. Bower, James B. Bawlin, Linn Boyd, Richard Broadhead, Aaron V. Brown, Milton Brown, William J. Brown, Edmund Burke, Armistead Burt, George Alfred Caldwell, John Campbell, Stephen Carey, Reuben Chapman, Augustus A. Chapman, Absalom H. Chappell, Duncan L. Clerich, James G. Clinton, Howell Cobb, Walter Coles, Edward Cross, Alvan Cullom, John R. I. Daniel, John W. Davis, John B. Dawson, Ezra Dean, James Dellet, Stephen A. Douglass, George C. Dromgoole, Alexander Duncan, Chesselden Ellis, Isaac G. Farlee, Orlando B. Ficklin, Henry D. Foster, Richard French, George Fuller, William H. Hammett, Hugh A. Haralson, Sam. Hayes, Thomas J. Henley, Isaac E. Holmes, Joseph P. Hoge, George W. Hopkins, George S. Houston, Edmund W. Hubard, William S. Hubbell, James M. Hughes, Charles J. Ingersoll, John Jameson, Cave Johnson, Andrew Johnson, George W. Jones, Andrew Kennedy, Littleton Kirkpatrick, Alcee Labranche, Moses G. Leonard, William Lucas, John H. Lumpkin, Lucius Lyon, William C. McCauslen, William B. Maclay, John A. McClernand, Felix Grundy McConnel, Joseph J. McDowell, James J. McKay, James Matthews, Joseph Morris, Isaac E. Morse, Henry C. Murphy, Willoughby Newton, Moses Norris, jr., Robert Dale Owen, William Parmenter, William W. Payne, John Pettit, Joseph H. Peyton, Emery D. Potter, Zadock Pratt, David S. Reid, James H. Relfe, R. Barnwell Rhett, John Ritter, Robert W. Roberts, Jeremiah Russell, Romulus M. Saunders, Wm. T. Senter, Thomas H. Seymour, Samuel Simons, Richard F. Simpson, John Slidell, John T. Smith, Thomas Smith, Robert Smith, Lewis Steemard, Alexander H. Stephens, John Stewart, James W. Stone, Selah B. Strong, Wm. H. Styles, George

chiefly from the free States. In the Senate, it was carried by Southern votes, and so close, that no two could have been spared. This re-enactment of the Missouri Compromise stands forth, then, as an unmistakable Southern measure—Southern in its conception, Southern in its support, Southern in its consummation; and the speakers for it either all Southern men, or that part from the free States who most cherished the Southern interest. Of these, Mr. Buchanan, one of the most eminent among the Northern friends of the South, and one of the most zealous for the re-enactment of the Missouri Compromise, thus spoke:—

"He was pleased with it (the renewed Compromise) again, because it settled the question of slavery. These resolutions went to re-establish the Missouri Compromise, by fixing a line within which slavery was to be in future confined. That controversy had nearly shaken the Union to its centre in an earlier and better period of our history; but this Compromise, should it be now re-established, would prevent the recurrence of similar dangers hereafter. Should this question be now left open for one or two years, the country could be involved in nothing but one perpetual struggle. We should witness a feverish excitement in the public mind; parties would divide on the dangerous and exciting question of abolition; and the irritation might reach such an extreme as to endanger the existence of the Union itself; but close it now, and it will be closed forever.

"Mr. B. said he anticipated no time when the country would ever desire to stretch its limits beyond the Rio del Norte; and such being the case, ought any friend of the Union to desire to see this question left open any longer? Was it desirable again to have the Missouri question brought home to the people, to goad them to fury? That ques-

---

Sykes, William Taylor, Jacob Thompson, John W. Tibbatts, Tilghman H. Tucker, John B. Weller, John Wentworth, Joseph A. Woodward, Joseph A. Wright, Wm. L. Yancy, Jacob S. Yost.

The Senators voting for it were:

Messrs. Allen, of Ohio; Ashley, of Arkansas; Atchison, of Missouri; Atherton, of New Hampshire; Bagley, of Alabama; Benton, of Missouri; Breese, of Illinois; Buchanan, of Pennsylvania; Colquet, of Georgia; Dickinson, of New York; Dix, of New York; Fairfield, of Maine; Hannegan, of Indiana; Haywood, of North Carolina; Henderson, of Mississippi; Heger, of South Carolina; Johnson, of Georgia; Lewis, of North Carolina; McDuffie, of South Carolina; Merrick, of Maryland; Miles, of Connecticut; Semple, of Illinois; Sevier, of Arkansas; Sturgeon, of Pennsylvania; Tappan, of Ohio; Walker, of Mississippi; Woodbury, of New Hampshire.

tion between the two great interests of our country had been well discussed and well decided; and from that moment Mr. B. had set down his foot on the solid ground then established, and there he would let the question stand forever. Who could complain of the terms of that Compromise? It was then settled that north of 36 degrees 30 minutes, slavery should be forever prohibited. The same line was fixed upon in the resolutions recently received from the House of Representatives, now before us. The bill from the House for the establishment of a territorial government in Oregon, excluded slavery altogether from that vast country. How vain were the fears entertained in some quarters of the country that the slaveholding States would ever be able to control the Union! While, on the other hand, the fears entertained in the South and West, as to the ultimate success of the Abolitionists, were not less unfounded and vain. South of the Compromise line of 36 degrees 30 minutes, the States within the limits of Texas applying to come into the Union, were left to decide for themselves whether they would permit slavery within their limits or not. And under this free permission, he believed with Mr. Clay (in his letter on the subject of annexation), that if Texas should be divided into five States, two only of them would be slaveholding, and three free States."

Thus spoke Mr. Buchanan, and, in so speaking, was the accepted mouthpiece, and fair reflector of the sentiments of the large party with whom he acted. And here it is proper to explain the reason why it became necessary to re-enact the Missouri Compromise line; and the explanation is found in the history of the times. Thus: six months after the establishment of the Missouri Compromise line, the treaty with Spain was ratified, by which a new boundary with that power was established, by which Texas was brought up to the river Arkansas in about north latitude 37; and followed that river, north-west, to its source, above latitude 39—according to the treaty, as far as north latitude 42. Texas admitted slavery, and her laws and constitution spread the institution all over her territory; and as the parallel of 36° 30′—about 450 miles of it—fell within her territory, the Missouri Compromise line was, to that extent, effaced. It was to restore it in that effaced part, being in fact much the greatest part of it, that the line was re-established in the compact for admitting Texas into the Union. This is a clear case of Congress legislating upon slavery in a Territory; and the distinction taken that it was done by compact, and not law, is

unfounded and absurd. The compact itself is only a law of Congress, agreed to by Texas; and the law passed before Texas acted: and the Constitution is paramount over treaties and compacts as over laws. Neither statute, treaty, nor compact can alter the Constitution, nor do any thing contrary to it: and the only difference between the Texas and Missouri Compromises is, that while both rest upon acts of Congress, one has been made the foundation of a proceeding with a foreign power. Quere: Can the Supreme Court invalidate this re-enacted line?

This brings down the sanctions of the Missouri Compromise to the year 1845—being twenty-five years after its first enactment—ample time it might be supposed for its constitutionality to be questioned, if there was ground for it; and ample time for it to have been found out, if such was the fact, that its enactment worked an inequality of the States, and involved degradation and injury to a part of them. No such things were then discovered, and we will now go forward four years further, and under another administration, and that a Southern one, and show that same measure still receiving the sanction of those who have since commenced its repudiation. This further sanction was also on a responsible legislative measure—the establishment of the Oregon territorial government, August, 1848. The bill had come up from the House without any thing in it on the subject of slavery: Mr. Hale moved to extend the anti-slavery ordinance of '87 to the Territory, and it was done. Mr. Douglass moved to extend the Missouri Compromise line to the Pacific Ocean, and that motion received the following vote: Yeas—Messrs. Atchison, of Mri.; Badger, of N. C.; Bell, of Tenn.; Benton, of Mri.; Berrian, of Geo.; Borland, of Ark.; Bright, of Ind.; Butler, of S. C.; Calhoun, of S. C.; Cameron, of Penn.; Davis, of Mppi.; Dickinson, of N. Y.; Downs, of Lou.; Fitzgerald, of Mich.; Foote, of Mppi.; Hannegan, of Ind.; Houston, of Tex.; Hunter, of Vir.; Johnson, of Md.; Henry Johnson, of Lou.; Johnson, of Geo.; King, of Ala.; Lewis, of Ala.; Mangum, of N. C.; Mason, of Vir.; Metcalf, of Ken.; Pearce, of Md.; Sebastian, of Ark.; Spruance, of Del.; Sturgeon, of Penn.; Turney, of Tenn.; Underwood, of Ken. The amendment itself, thus offered by Mr. Douglass, was not merely an extension of the line in a particular case, but a re-

vival, and a general and perpetual enforcement of the Missouri Compromise line on all Territories. It was in these words:—

"That the line of 36 degrees, 30 minutes of north latitude, known as the Missouri Compromise line, as defined by the eighth section of an Act entitled, '*An Act to authorize the people of the Missouri Territory to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States, and to prohibit slavery in certain Territories, approved March 6th*, 1820,' *be, and the same is hereby declared to extend to the Pacific Ocean;* and the eighth section, together with the compromise therein effected, is hereby revived, and declared to be in full force and binding for the future organization of the Territories of the United States, in the same sense, and with the same understanding, with which it was originally adopted."

It was on Thursday, August the 10th, 1848 (for in cases of sudden political conversions it is profitable to look to dates, even to a day)—it was on this first decade of the second month, of the second half, of the year 1848, that this vote passed in the American Senate; and it must be received as the highest sanction of the compromise on the part of those voting for it, which could be devised. It is not merely an extension of the compromise line: it is also its perpetuation, and application of it to all the United States Territories—to enter into their organization, and to be in full force, and binding upon them. Such a vote went beyond the admission of constitutionality: it went to the merits and expediency of the measure—approved it under every aspect. It even went beyond the words of the Missouri act—entered its spirit—seized its sense and intent, as understood at the time of its adoption;—and solemnly sanctioned and preserved the whole. Certainly, with respect to those so voting, and they were men to vote responsibly, nothing more could be asked. Constitutionality, and expediency, were equally vouched for. The 33 affirmative votes were a majority of the Senate: the amendment was incorporated with the bill, and went to the House for its concurrence, where it received the vote of the Southern members, and some part of their friends in the free States—82 in all;* not enough to carry it: so it was disagreed

* The members of the House voting in favor of concurring with the Senate, *i. e.* Mr. Douglass's amendment, were:—Messrs. Adams, Atkinson, Barringer, Barrow,

to, and returned to the Senate. It was in the night, and the last night of the session; and Mr. Benton, fearing the loss of the Oregon bill in the disagreement between the two Houses, moved that the Senate recede from its amendment. Then came another vote on the Missouri Compromise clause; and twenty-five Senators—being the array that always stood most firmly for the South *—voted against receding; that is to say, in favor of extending, enforcing, preserving, and perpetuating the Missouri Compromise line, and making it applicable to all Territories. It was called the Missouri Compromise line, and, astronomically, the extension would have been the same as the original part, but politically far different and stronger; for the Louisiana part went through territory, all slave, and made one side of the line free; the California part would go through territory, all free, and make one part slave. This was an effect which many of the free State members of the House, usually voting with the South on slavery questions, could not stand: and hence the loss of the amendment there.

This vote in the Senate was accompanied by declarations of their opinions by several Senators—among others, by Mr. Johnson, of Maryland, who said: "*He believed in the existence of the power in Congress to pass a law to prohibit slavery, and if such a law were presented to the Supreme Court for a decision on its constitutionality, it would be in favor of the law. As a judicial question, the decision would be against protection to the South.*" On a previous bill providing territorial governments for Oregon, California, and New Mexico, he had said that he should him-

---

Bayly, Beale, Bedinger, Birdsall, Bocock, Botts, Bowdon, Bowlin, Boyd, Boydon, Brodhead, Charles Brown, Albert G. Brown, Buckner, Burt, Cabell, Chapman, Chase, Reverly L. Clarke, Clingman, Howell Cobb, Williamson R. W. Cobb, Cocke, Crozier, Daniel, Donnell, Garnett Duncan, Alexander Evans, Featherston, Flournoy, French, Fulton, Gayle, Goggin, Greene, Willard P. Hall, Haralson, Harmanson, Harris, Haskell, Hill, Hilliard, Isaac E. Holmes, George S. Houston, Charles J. Ingersoll, Iverson, Andrew Johnson, Robert W. Johnson, George W. Jones, John W. Jones, Kaufman, Thomas Butler King, Ligon, Lumpkin, McDowell, McKay, M'Lane, Meade, Morehead, Outlaw, Pendleton, Phelps, Pillsbury, Preston, Rhett, Roman, Shepperd, Stanley, Stephens, Thomas, Jacob Thompson, John B. Thompson, Robert A. Thompson, Tompkins, Toombs, Venable, Wallace, and Woodward—82.

* Their names:—Messrs. Atchison, Badger, Bell, Berrien, Borland, Butler, Calhoun, Davis of Mississippi, Downs, Foote, Hunter, Johnson of Maryland, Johnson of Louisiana, Johnson of Georgia, Lewis, Mangum, Mason, Metcalfe, Pearce, Rusk, Sebastian, Turney, Underwood, Westcott, and Yulee—25.

self have submitted an amendment adopting the line of the Missouri Compromise, had he not been anticipated in his motion by a Senator from Indiana (Mr. Bright).

The passage of the Oregon bill gave occasion to President Polk to express his opinion of the Missouri and Texas compromises—their happy effects in tranquillizing the Union, and the necessity of preserving them inviolate. He said:—

"In December, 1819, application was made to Congress by the people of the Missouri Territory, for admission into the Union as a State. The discussion upon the subject in Congress involved the question of slavery, and was prosecuted with such violence as to produce excitements alarming to every patriot in the Union. But the good genius of conciliation which presided at the birth of our institutions finally prevailed, and the Missouri Compromise was adopted. This compromise had the effect of calming the troubled waves, and restoring peace and good will throughout the States of the Union. I do not doubt that a similar adjustment of the questions which now agitate the public mind would produce the same happy results. If the legislation of Congress on the subject of the other Territories shall not be adopted in a spirit of conciliation and compromise, it is impossible that the country can be satisfied, or that the most disastrous consequences shall fail to ensue. When Texas was admitted into our Union, the same spirit of compromise which guided our predecessors in the admission of Missouri, a quarter of a century before, prevailed without any serious opposition. The Joint Resolution for annexing Texas to the United States, approved March 1st, 1845, provides that, 'such States as may be formed out of that portion of the Territory lying south of 36 degrees 30 minutes north latitude, commonly called the Missouri Compromise line, shall be admitted into the Union with, or without slavery, as the people of such State asking admission may decide. And to such State or States as shall be formed out of said Territory north of the Missouri Compromise line, slavery or involuntary servitude (except for crime) shall be prohibited. The Territory of Oregon lies far north of 36 degrees 30 minutes, the Missouri and Texas Compromise lines. Its southern boundary is the parallel of 42, leaving the intermediate distance to be 330 geographical miles. And it is because the provisions of this bill are not inconsistent with the terms of the Missouri Compromise, if extended from the Rio Grande to the Pacific Ocean, that I have not felt at liberty to withhold my sanction. Had it embraced Territories south of that compromise, the question presented for my consideration would have been of a far different character, and my action upon it would have cor-

responded with my convictions. Ought we now to disturb the Missouri and Texas compromises? Ought we, at this late day, in attempting to annul what has been so long established, and acquiesced in, to excite sectional divisions and jealousies—to alienate the people from different portions of the Union from each other—and to endanger the existence of the Union itself?"

These were the earnest and patriotic appeals of Mr. Polk, in favor of the two compromises; one of which restored peace to a distracted country, the other brought Texas into the Union. He prayed for the perpetuity of these healing measures, not only in his message on the Oregon bill, but also in his last annual message—the last of his most formal communications to Congress: in that last message he repeated his sentiments, saying:—

"Upon a great emergency, and under menacing dangers to the Union, the Missouri Compromise line with respect to slavery was adopted. The same line was extended further west on the acquisition of Texas. After an acquiescence of near thirty years in the principles of compromise recognized and established by these acts, and to avoid the danger to the Union which might follow, if it were now disregarded, I have heretofore expressed the opinion that that line of compromise should be extended on the parallel of 36° 30′ from the western boundary of Texas, where it now terminates, to the Pacific Ocean."

Such were the reiterated sentiments of President Polk, up to the end of his presidential service, which, unfortunately, was only precursor to the termination of his life. Far from seeing any thing in the Missouri Compromise violative of the Constitution, or insulting and injurious to the slave States, or as making an inequality in the States, he saw in it only beneficent and felicitous effects—pacification of the country, extinction of a rising conflagration, and preservation of the Union. He was a Southern man and a slaveholder, and certainly could not be blind to dangers to Southern States and slaveholders; his cabinet, also, were men of the South, or Northern men deep in Southern sympathies, principles, and feelings: James Buchanan, Secretary of State; Robert J. Walker, of the Treasury; William L. Marcy, of New York, War Department; John Y. Mason, Navy; Cave Johnson, Postmaster-General; Isaac Toucey, Attorney-General.

The year 1850 presents the last instance to be given of Southern sanction of the Missouri Compromise line—a date sufficiently recent to avoid the statute of limitations, if any date can be late enough to prevent the running of that statute against mutable politicians. Mr. Calhoun was then dead: Mr. Davis, of Mississippi, seemed to succeed to the head of his party; and in the discussion of Mr. Clay's compromise scheme, reported from the Committee of Thirteen, demanded the extension of the Missouri line to the Pacific Ocean, and the recognition of slavey on the south side of that line; and declared these terms to be the least that he would take. Thus:—

"I here assert that never will I take less than the Missouri Compromise line extended to the Pacific Ocean, with the specific recognition of the right to hold slaves in the Territory below that line; and that, before such Territories are admitted into the Union as States, slaves may be taken there from any of the United States, at the option of their owners."

Mr. Clay replied to the demand of Mr. Davis, and said:—

"I am extremely sorry to hear the Senator from Mississippi say that he requires, first, the extension of the Missouri Compromise line to the Pacific, and, also that he is not satisfied with that, but requires, if I understood him correctly, a positive provision for the admission of slavery south of that line. And now, sir, coming from a slave State as I do, I owe it to myself, I owe it to truth, I owe it to the subject, to say that no earthly power could induce me to vote for a specific measure for the introduction of slavery where it had not before existed, either south or north of that line. Coming as I do from a slave State, it is my solemn, deliberate, and well-matured determination, that no power—no earthly power—shall compel me to vote for the positive introduction of slavery either south or north of that line. Sir, while you reproach, and justly too, our British ancestors for the introduction of this institution upon the continent of North America, I am, for one, unwilling that the posterity of the present inhabitants of California and of New Mexico, shall reproach us for doing just what we reproach Great Britain for doing to us. If the citizens of these Territories choose to establish slavery, and if they come here with Constitutions establishing slavery, I am for admitting them with such provisions in their Constitutions; but then it will be their own work, and not ours; and their posterity will have to reproach them, and not us, for forming Constitutions allowing the institution of slavery to exist among them. These are my views, sir, and

I choose to express them; and I care not how extensively, or universally they are known."

Mr. Turney, of Tennessee, moved the amendment to cover the demand of Mr. Davis: it was to extend the Missouri Compromise line to the Pacific, limiting the State of California to the north side of that line, and establishing slavery to the south of it. His amendment consisted of two sections, and constituted a new bill, and was in these words:—

"When it shall be made to appear to the President of the United States, by satisfactory evidence, that the people inhabiting the Territory of California, (or so much of said Territory as is comprehended in the limits proposed by this bill as the boundaries of the State of California,) assembled in convention, have agreed to a line not further south than the parallel of 36 degrees 30 minutes north latitude, as the southern boundary of said State, and limited the representation of said State to one State until after the next census of the inhabitants of the United States, the said State of California may be admitted into the Union upon the proclamation of the President, upon an equal footing with the original States.

"*Sec.* 2. *And be it further enacted,* That the line of 36 degrees 30 minutes north latitude, known as the Missouri Compromise line, as defined in the eighth section of an act entitled, '*an act to authorize the people of the Missouri Territory to form a Constitution and State Government, and for the admission of such State into the Union on an equal footing with the original States, to prohibit slavery in certain Territories,*' approved March 6th, 1820, be, and the same is declared to extend to the Pacific Ocean: and the said eighth section, together with the compromise therein effected, is hereby revived, and declared to be in full force and binding for the future organization of the Territories of the United States in the same manner and with the same understanding with which it was originally adopted."

For this amendment twenty-four Senators voted; to wit:—*Messrs.* Atchison, Badger, Barnewell, Bell, Berrien, Butler, Clemens, Davis, of Mississippi; Dawson, of Georgia; Downs, of Louisiana; Foote, Houston, Hunter, (R. M. T.), King, of Alabama; Mangum, Mason, Morton, of Florida; Pearce, of Maryland; Pratt, of Maryland; Rusk, of Texas; Sebastian, of Arkansas; Soulé, of Louisiana; Turney, of Tennessee; and Yulee, of Florida.

It was Tuesday, the 6th day of August, *Anno Domini* 1850.

that this vote was given; so that up to that day, this array of Senators, reputed to represent Southern interests, feelings, and principles, saw nothing unconstitutional, unjust, or derogatory to other States in it; and adopted it in spirit and understanding, and with the same intent of perpetual observance with which it was originally adopted. That understanding was, that Congress had power to legislate upon slavery in Territories, and to abolish it therein when it saw fit, and that such legislation worked no inequality in the States; and, in the particular case of the Missouri Compromise act, the partition of the province of Louisiana between free and slave States was a continuation of the policy which divided the territory east of the Mississippi, between the same classes of States; and as necessary then to save the Union as the ordinance of 1787 had been to save it. This is the "understanding" to which those Senators bound themselves who voted for Mr. Turney's amendment, on Tuesday, the 6th day of August, *Anno Domini* 1850. The amendment was not agreed to. Thirty-two Senators voted against it—not for unconstitutionality, but for being the reverse in its effects of the measure it professed to extend, the original line acting on territory all slave, and abolishing it on one side; the extension acting upon territory all free, and establishing slavery where it never had been. The non-extension of this line was a great subject of complaint, and deluded many people into a belief of its injustice—deceived by a name which, being the same throughout, was exactly the reverse in its practical effect. The California State bill passed: the Compromise line was not extended to the Pacific: ten Senators signed a protest against it, and presented it to the Senate for entry on the journal, (which was refused,) as injurious to the slave States, "*fatal to the peace and equality of the States they represented, and leading, if persisted in, to the dissolution of that confederacy in which the slaveholding States have never sought more than an equality, and in which they will not be content to remain with less.*" This protest was signed by—*Messrs.* Mason and Hunter, of Virginia; Butler and Barnewell, of South Carolina; Mr. Turney, of Tennessee; Mr. Pierre Soulé, of Louisiana; Mr. Jefferson Davis, of Mississippi; Mr. Atchison, of Missouri; and *Messrs.* Yulee, and Morton, of Florida.

It was in this discussion on the Oregon territorial bill that

Mr. Calhoun arrived at his ultimate doctrines on the slavery question. The extension of the ordinance of '87 to Oregon greatly excited him—proclaiming it the end of the Union.* He denounced that ordinance as proper to constitute the first chapter when the history of the dissolution of this Union should be written: he denounced the Missouri Compromise Act as fit to constitute the second chapter of that same history; and he denounced the extension of the old ordinance to Oregon as furnishing proper matter for the third chapter of that same history. He declined to say what would be the fourth chapter, but clearly intimated its character. †

But while thus making the Missouri Compromise Act a cause for the dissolution of the Union, and a theme for the future American historian as such, yet it was not for unconsti-

---

* "The great strife between the North and the South is ended. The North is determined to exclude the property of the slaveholder, and, of course, the slaveholder himself, from its territories. On this point there seems to be no division in the North. In the South, he regretted to say there was some division of sentiment. The effect of this determination of the North was to convert all the Southern population into slaves; and he would never consent to entail that disgrace on his posterity. He denounced any Southern man who would not take the same course. Gentlemen were greatly mistaken if they supposed the presidential question in the South would override this more important one. The separation of the North and the South is completed. The South has now a most solemn obligation to perform—to herself—to the Constitution—to the Union. She is bound to come to a decision not to permit this to go any further, but to show that, dearly as she prizes the Union, there are questions which she regards as of greater importance than the Union. She is bound to fulfil her obligations as she may best understand them. This is not a question of territorial government, but a question involving the continuance of the Union."—*Mr. Calhoun, on Oregon.*

Mr. Bell, of Tennessee, replied to this annunciation and denunciation, saying:

"He believed that the Senator from South Carolina (Mr. Calhoun), and those who concurred with him, had placed the South in a wrong position, when they assumed that by the decision of this question the die would be cast, and the issue now be made which involves the dissolution of the Union. He contended that the issue was prematurely made when it was made on the Oregon question. If we are to quarrel with the North, let us be sure that in all respects our ground of dispute be tenable for us."—*Mr. Bell's Speech.*

† "Now let me say, Senators, if our Union and system of government is doomed to share the fate of so many great people who have gone before us, the historian, who, in some future day, may record the events leading to so calamitous a result, will devote his first chapter to the ordinance of 1787, as lauded as it and its authors have been, as the first in that series which led to it. His next chapter will be devoted to the Missouri Compromise, and the next to the present agitation. Whether there will be another beyond, I know not; it will depend on what we may do."—*Same speech.*

tutionality, but for its effects—for the insult, injustice, degradation of preventing a slaveholder from carrying his slave property (*i. e.* the law of the State which makes it property) into a common estate, procured by the blood and money of all. For this reason he condemned it, but not to abrogation, or repeal, expressly stopping short of these remedies, because of the effect which the "attempt" even would have upon the Union. In this sense, he thus delivered himself:—

"After an arduous struggle of more than a year on the question, whether Missouri should come into the Union, with or without restrictions prohibiting slavery, a compromise line was adopted between the North and the South; but it was done under circumstances which made it nowise obligatory on the latter. It is true it was moved by one of its distinguished citizens, (Mr. Clay,) but it is equally so that it was carried by the almost united voice of the North against the almost united voice of the South; and was thus imposed on the latter by superior numbers in opposition to her strenuous efforts. The South has never given her sanction to it, or assented to the power it asserted. She was voted down, and has simply acquiesced in an arrangement which she has not had the power to reverse, and which she could not attempt to do without disturbing the peace and harmony of the Union—to which she has ever been adverse."*

I quote this part of the speech for two purposes: *first*, to show that the dogma of the unconstitutionality of the Missouri Compromise Act, had not at that time, (Aug. 1848,) been invent-

* "It was on this occasion that Mr. Dix, of New York, brought out the proof that Mr. Calhoun, as a member of Mr. Monroe's cabinet, had given a written opinion in favor of the constitutionality of the Missouri Compromise, and also in favor of its expediency—a fact which he himself had stated in the Senate ten years before, (in 1848,) and how he blamed Mr. Randolph for opposing it, and that he had since changed his opinion because it encouraged the abolitionists. As for the rest of his account of the compromise, it was all of a piece with his own forgetfulness of the part he had acted in it—all moonshine and figment of the brain. It was not Mr. Clay who moved the compromise, but it came down from the Senate, where it had been moved by Mr. Thomas, of Illinois, a friend to the South, and voted for by every Southern senator, and some of their friends from the North. It had been first suggested in the House the year before it was passed by Mr. Louis M'Lane, of a slaveholding State, and as a friend to the South, and as he said, with the approbation of Southern members. It was moved in the House by Mr. Storrs, of New York, a friend of the South, but rejected by Northern votes. It was not imposed upon the South by Northern votes, but sought by the South and obtained by its vote—the whole vote in the Senate and a majority in the House. The South did give her sanction to it, in her almost undivided support of its re-enactment at the admission of Texas.

ed; and, *secondly*, that its abrogation was not to be attempted, because "*the attempt to reverse it would disturb the peace and harmony of the Union.*" Mr. Calhoun was a man of head and system, and though working at a dissolution of the Union since the year 1830, his system was to throw upon the North the blame of the separation—to make the segregation of the slave States an act of necessity—of self-defence—forced upon them by aggressions, encroachments, and crusades against their slave property. To attack the Missouri Compromise was to give up that defensive attitude—to make the South the aggressor—and consequently to make it responsible for disturbing the peace and harmony of the Union, and also for furnishing matter for the contents of that fourth chapter in the history of its dissolution which he shadowed forth, but forbore to name.

It was in one of the bills brought forward at this period, (July, 1848,) to give governments to the newly acquired Territories, that Mr. Calhoun gave glimpses of two doctrines which, classing with the vagaries of an over-excited imagination, attracted no attention at the time, but have since acquired an ominous pre-eminence; namely, 1. The self-extension of the Constitution to Territories, carrying slavery along with it. 2. The remission of the slavery question in Territories to the Supreme Court of the United States,* by appeals from the Territorial Courts, authorized to try questions of freedom or slavery between the slave and his master. The first of these doctrines was exhibited in the declaration quoted in the introductory note to this examination, that upon the instant of the ratification of the treaty with Mexico, the sovereignty of the United States entered upon the acquired territory, carrying with it the Constitu-

* "Writs of error and appeals from the final decisions of said Supreme Court shall be allowed, and may be taken to the Supreme Court of the United States, in the same manner and under the same regulations as from the circuit courts of the United States, except only that in all cases involving title to slaves the said writs of error or appeals shall be allowed and decided by the said Supreme Court, without regard to the value of the matter, property, or title in controversy; and except, also, that a writ of error or appeal shall be allowed to the Supreme Court of the United States from the decision of the Supreme Court created by this act, or any judges thereof, or of the district courts created by this act, or of any judge thereof, upon any writ of *habeas corpus* involving the question of personal freedom; and each of the said district courts shall have and exercise the same jurisdiction in all cases arising under the Constitution and laws of the United States, as is vested in the circuit and district courts of the United States; and the first six days of every term of said courts, or so much thereof a-

tion, with its overriding control over all the laws and institutions of Mexico inconsistent with it. The second was formally proposed in a bill to give governments to California, New Mexico, and Oregon, all lumped together in one conglomerate enactment, with a special provision to authorize the initiation of freedom proceedings in the two former by the slave against his master, either in a trial at law, or upon a writ of *habeas corpus;* with appeal to the Supreme Court. This bill passed the Senate, after a curious debate, of more import now than then, but was unceremoniously repulsed from the House without even the respect of a first reading—being tabled for ever the instant its advent was announced. It was a strange bill, and voted for by those who did vote for it, upon most contradictory reasons—some because they deemed it the best kind of a Wilmot proviso—some to gratify Mr. Calhoun, whose solicitude for it was excessive—some as for an absurdity which could not pass, and if it did, could have no operation, as no man would carry a negro free or bond, to California or New Mexico, just to try the question of freedom with him, with appeal to the Supreme Court—a trial in which the owner would be loser, whether he won or lost the suit. For the slave being entitled to his liberty while the suit was going on, would be free during that period, say seven years; and having no property, and subject to no process for costs or damages, the owner would merely get him back at the end of the suit—if he could catch him after seven years of free range from the shores of the Pacific to Washington City—minus the loss of his labor for the time, his court fees, and lawyers' fees, his personal expenses attending courts in California, and in the District of Columbia, and in his journeyings backwards and forwards all the while, and damage to his other neglected business—besides the degradation of being sued by his own negro, and dragged by him across the continent, and outshone by him in the splendor of his living and in liberality to his counsel (for the anti-slavery societies would supply him with bags of gold, while his poor master would be selling his stinted crops to get the means of carrying on the suit). With such

---

shall be necessary, shall be appropriated to the trial of causes arising under the said Constitution and laws; and writs of error and appeals, in all such cases, shall be made to the Supreme Court of said Territory, the same as in other cases."—*Section* 24 *of the Conglomerate bill.*

consequences before him, no man would carry his slave six thousand miles by water, and over free soil at Panama or Nicaragua, or three thousand miles over land and Indian country between the old States and the Pacific Ocean, just to begin that suit with him which the Senate's bill proposed. Yet the bill was the work of a Select Committee, eight in number, (being three more than the usual Senate committees,) including Mr. Calhoun, and a majority of his friends on the slavery question.* Mr. Badger, of North Carolina, saw in it a surrender of the rights of the South, and as effectual a bar to the introduction of slavery as the Wilmot proviso could have been. He said, " He regarded this bill as a complete surrender of the rights of the South. He believed negro slavery would be as effectually excluded by this bill as if the Wilmot proviso, or any other bill, had passed.†"

It was in the discussion on this bill that those remarks upon the probable decision of the Supreme Court were made which were quoted in the Introductory Note, and which foreshadowed the fate of any judges who should have to pronounce upon the question of African slavery, as a political question under our Constitution. The remarks and speculations ran right off to the geographical *locus in quo* of each judge! and when that could take place in the American Senate, and in anticipation of any decision, what might not be expected after an actual decision, and a strongly developed geographical line, in the line of division between different opinions?

It was also in the same bill—the conglomerate for giving governments to three Territories together—that was placed that section, unobserved at the time, as mentioned in the Introduction to this Examination, which proposed to extend the Consti-

---

* They were:—Messrs. John M. Clayton, of Delaware; Bright, of Indiana; Calhoun, of South Carolina; Clarke, of Rhode Island; Atchison, of Missouri; Phelps, of Vermont; Dickenson, of New York; Underwood, of Kentucky. Of this committee, two of its members, Messrs. Clarke and Underwood, voted against the bill. Of course, the authors of the bill believed that a slave of the African race could maintain a suit in the United States Supreme Court.

† Mr. Benton voted for it, (taking care to condemn it in his speech,) " to estop Mr. Calhoun," with a measure of his own—a Wilmot proviso of his own concoction. Certainly, no Wilmot ever devised so efficacious a measure for keeping slavery out of New Mexico and California, and Mr. Benton was perfectly willing that Mr. Calhoun should have that credit.

tution to Territories. It was in section 35 of the bill—that is to say, in the penultimate section of an enormous bill of 36 sections, where no one would look for a new principle, that this unprecedented novelty found its berth. Nothing but details and matters of form go to the end of the bill—its whole power and character being in a few of the front sections. Parliamentarily, nothing but formal details to carry out a principle can follow the principle, always put foremost. To these front sections the opponents of bills look; and fighting the battle upon these main sections, the details are left with the friends of the measure. They are considered matters of form, to carry out what the leading sections establish; and, in that point of view, are left to the committee who prepares the bill. This is the case in all bills, even those of considerable length, where the whole could be read in a reasonable time. How much more so in an enormous bill of six and thirty sections! and that upon as old a subject as territorial government, all the details of which had been a matter of course since the ordinance of 1787. Of such a bill it may well be conceived that none but those who drew it ever saw the concluding sections; and such I am able to say, upon the highest presumptive evidence, was the case with this conglomerate bill of 36 sections. That presumption is founded upon two facts: *first*, that no speaker for, or against the bill, ever alluded to it in a single word spoken! an absence of remark on such a new and startling provision which can only be accounted for upon the hypothesis of a total absence of all knowledge of its existence. *Secondly*, that I myself knew nothing of it! and so actually voted for a bill containing a novel provision, never heard of before—and of absurd impossibility. The section was in these words:

SECTION 35. *And be it further enacted, That the Constitution and laws of the United States are hereby extended over, and declared to be in force in said Territories of California and New Mexico, so far as the same, or any provision thereof, may be applicable.*"

As the bill did not pass the House, this section, though it passed the Senate, became in fact as if it never had been; but it answers a purpose now, in showing that the framers of the bill then deemed an act of Congress necessary to extend the Constitution over Territories, and give it force and effect therein

—the same as acts of Congress are so extended: with this incongruity, that the laws so extended being rules of action, are capable of operation; while the Constitution, being a collection of principles, can operate nowhere until these principles are vitalized by law: and that can only be done by Congress—Congress alone being the body which can legislate *under* the Constitution. So that, if the Constitution could be extended to a Territory, not a provision in it could take effect until Congress had passed an act to put it in operation.

Nine months afterwards, that is to say, at the end of the ensuing session, (March 3d, 1849,) that attempt was made through Mr. Walker, of Wisconsin, to extend the Constitution to the three Territories in a lump, which has been noticed heretofore, and which being repulsed, the higher ground is taken that the Constitution goes of itself to Territories, carrying slavery along with it, in defiance of Congress and the people of the Territory. And this is what the Supreme Court has decided—the judicial power deciding a political question! and in a way which the political power had twice repulsed.*

---

* One good effect the decision of the Court has had, and that is—the extermination of Squatter Sovereignty. It tears up that doctrine root and branch; and, it would seem, to the gratification of its votaries. For they rally to the Court's decision, and make adherence to it the test of democracy, with the same zeal with which they supported that doctrine during its brief day.

What tests of democracy we have seen in three brief years! Adherence to the Missouri Compromise the test when Mr. Douglass brought in his Nebraska bill, and until Mr. Dixon's proposed amendment started new game. Then destruction to the Compromise, and devotion to Squatter Sovereignty was the test. And this test continued for about two years, when it was exploded by the Supreme Court's decision. Then that decision becomes the test, and the democrat is politically excommunicated who does not change again—give up Squatter Sovereignty, as he did the Compromise; and take the Constitution, *per se*, as sole slavery legislators in a territory, and only a one-sided legislation! to carry slavery into all territories, and abolish it in none! and keeping it, and protecting it, there in defiance of Congress, and the people, and in defiance of all laws previously existing there. And this to be done by virtue of a Constitution in which its framers would not permit the word "*slave*," or any equivalent phrase, to be used!

CONCLUSION.

This completes the historical view which I proposed to take of the Supreme Court's decision on the two points deemed political—1. The invalidation of the Missouri Compromise Act; 2. The self-extension of the Constitution to Territories, carrying African slavery along with it. And the result is, that the decisions conflict with the uniform action of all the departments of the Federal Government from its foundation to the present time, and cannot be received as rules to govern Congress and the people without reversing that action, and admitting the political supremacy of the Court, and accepting an altered Constitution from its hands, and taking a new and portentous point of departure in the working of the Government. These decisions being political, are dependent upon moral considerations for their effect. They cannot be enforced. No mandamus can be directed to Congress and the people: no process of contempt can issue against them. Influence—not authority—is the only power the Court can wield. This being the case, and the two conflicting powers, (that of two generations on one hand, and the Supreme Court on the other,) being reduced to moral considerations to establish the best title to supremacy, it becomes indispensable to run a comparison between their respective claims to superiority, and strike the balance on the side that shows the best title. This I propose to do, and to make the points of comparison co-extensive with the influencing considerations in the whole case: 1. Numbers on each side. 2. Qualifications for forming a correct judgment. 3. Adaptation of times to calm consideration. 4. Freedom from connection with party contests. 5. Jurisdiction. 6. Unanimity, 7. Weight of reasons:—and of these, each in its order.

1. The numbers. These are as units to myriads. Two generations stand on one side: six judges sit on the other, and these six morally reduced to five, by the non-concurrence in one of them in the reasons of the others. So that, compared by numbers, the result is that one side counts with the stars of heaven; the other, with the fingers or toes on the hand or foot. --2. Qualifications for forming a correct judgment. Here the comparison is entirely in favor of the same side. They were the men who formed the Constitution, and put it into operation, while the Court are only new comers in that field, and can hardly be supposed to know more about the Constitution than those who made it, and the two generations who agreed with them. Without disparagement to the members of the Court, it must be admitted that the other side is their equal in point of ability, and these equals outnumbering them as myriads do units. And, without disparaging the legal profession, it must be remembered that the lawyer and the statesman are held to be incompatible characters—the cast of mind which qualifies a man for the great lawyer, disqualifying him for the safe statesman;* and in this case our ancestors were statesmen, the judges lawyers, and the questions political.—3. Adaptation of times to calm consideration. Here the advantage is with the two generations. They acted in times of calm: the judges during a storm of the passions. They acted upon an old light, shining steadily in a calm atmosphere: the judges on a new light, suddenly breaking out, and flashing fitfully in the bursts of a raging tempest. And such new lights are not considered safe guides in law, religion, or politics.†—4. Freedom from connec-

* See the speeches of William Pitt, (the father,)—of Burke, Fox, Sheridan, and the American John Randolph; and the histories of almost all great lawyers who have turned their hands to politics. Also remember Webster, already quoted, going out of his way to point out lawyers and judges as peculiarly subject to inaccurate ideas on the question of the Constitution and the Territories.

† And of this opinion was the present Supreme Court some two years ago, (1855,) as quoted by Mr. Justice M'Lean in his dissenting opinion—Mr. Justice Grier being the organ of the Court.

"We entertain the highest respect for that learned Court, (the Supreme Court of Michigan,) and in any question affecting the construction of their own laws, where we entertain any doubt, would be glad to be relieved from doubt and responsibility by reposing on their decision. There are, it is true, many dicta to be found in our decisions, averring that the courts of the United States are bound to follow the decisions of the

tion with party contests. With our ancestors these questions knew no party, political or geographical. The Republican and the Federalist of the first generation, the Whig and the Democrat of the second,—the man of the North, South, East and West, —all concurred, (until the new light sprung up,) in one concurrent opinion, manifested by continual acts, that Congress had power to legislate upon slavery in Territories, and that the Constitution did not extend to Territories: while the new opinion which conflicts with that, was born of party, and has become a new test of party, (of democracy,) outlawing from the democratic ranks every man that does not go it—that does not keep up with the changes, from the abrogation of the Missouri Compromise (which saved the Union) to squatter sovereignty, (which killed the compromise;) and thence to the decisions of the Supreme Court (which kills both). So that the new doctrine is both the child and champion of party, and itself a touchstone of party.—5. Jurisdiction. As a political question, the Court had no right to decide it, even if it came fairly before it. Congress had not only a right to act, but was bound to do so; and always had the subject fairly before it in seventy years' necessity to act upon it. Without right to try it, even if the case before them made it necessary, yet here the Court had no jurisdiction, and dismissed it for want of jurisdiction; and

---

State courts on the construction of their own laws. But although this may be correct, yet a rather strong expression of a general rule, it cannot be received as the annunciation of a maxim of universal application. Accordingly, our reports furnish many cases of exceptions to it. In all cases where there is a settled construction of the laws of a State, by its highest judicature established by admitted precedent, it is the practice of the courts of the United States to receive and adopt it, without criticism or further inquiry. When the decisions of the State court are not consistent, we do not feel bound to follow the last, if it is contrary to our own convictions; and much more is this the case where, after a long course of consistent decisions, some new light springs up, or an excited public opinion has elicited new doctrines subversive of former safe precedent."

Upon which Mr. Justice M'Lean remarks:

"These words, it appears to me, have a stronger application to the case before us than they had to the cause in which they were spoken as the opinion of this court: and I regret that they do not seem to be as fresh in the recollection of some of my brethren as in my own. For twenty-eight years, the decisions of the Supreme Court of Missouri were consistent on all the points made in this case. But this consistent course was suddenly terminated, whether by some new light suddenly springing up, or an excited public opinion, or both, it is not necessary to say."—*Dissenting Opinion.*

thus, left without a leg to stand on, it reached far over to get hold of the political questions by virtue of a rule which had no application, even in an actual existing case: so that, on the point of jurisdiction, our ancestors had it, and were under a necessity to act upon it: the Court had it not, and assumed it upon a supposition which had nothing to rest on, and as an addendum to a case which had no existence, and by virtue of a rule which had no application.—6. Unanimity in the decisions. Here again the flagrant contrast appears. Our ancestors were the myriad, and acted through seventy years without division of sentiment. All departments of the Government—legislative, executive, and judicial—and both classes of governments, State and Federal—men changing all the while—acted with one voice.* The Court was but nine—a single term—the same men

---

* "The judicial mind of this country, State and Federal, has agreed on no subject, within its legitimate action, with equal unanimity, as on the power of Congress to establish territorial governments. No court, State or Federal, no judge or statesman, is known to have had any doubts on this question for nearly sixty years after the power was exercised. Such governments have been established from the sources of the Ohio to the Gulf of Mexico, extending to the Lakes on the north and the Pacific Ocean on the west, and from the lines of Georgia to Texas. Great interests have grown up under the territorial laws over a country more than five times greater in extent than the original thirteen States; and these interests, corporate or otherwise, have been cherished and consolidated by a benign policy, without any one supposing the law-making power had united with the Judiciary, under the universal sanction of the whole country, to usurp a jurisdiction which did not belong to them. Such a discovery at this late date is more extraordinary than any thing which has occurred in the judicial history of this, or any other country. What do the lessons of wisdom and experience teach, under such circumstances, if the new light, which has so suddenly and unexpectedly burst upon us, be true? Acquiescence; acquiescence under a settled construction of the Constitution for sixty years, even if erroneous."—*Mr. Justice M'Lean.*

To the same effect Mr. Justice Catron, in his concurring opinion, who, although agreeing with the Court in its judgment, did so for a different reason; resting his own on a supposed violation of the treaty with France, and the equality of States under the Constitution. Thus:

"More than sixty years have passed away since Congress has exercised power to govern the Territories, by its legislation directly, or by territorial charters, subject to repeal at all times, and it is now too late to call that power into question, if this Court could disregard its own decisions; which it cannot do, as I think. It was held in the case of Cross *v.* Harrison, (16 How., 193–'4,) that the sovereignty of California was in the United States, in virtue of the Constitution, by which power had been given to Congress to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States, with the power to admit new States into the Union. That decision followed preceding ones, there cited. The ques-

all the while; and great diversity of opinion. Two of the Justices dissent entirely from the opinion of the Court, and give well reasoned arguments against that opinion, and in favor of a different one. Another of the Justices (Mr. Justice Nelson) abstained from expressing any opinion on the point in question. That reduced the concurring Justices to six; and of these, one, (Mr. Justice Catron,) while concurring in the judgment, did so for different reasons, wholly incompatible with those of the Court, and attacked their reasons as wholly unfounded. And, as in this case we only go by moral weight, his vote, though legally counted against Scott, weighs nothing for the Court's opinion; but the contrary, as impeaching its reasons: which reduces the concurrent judges to five—a majority of one. And then two of the remaining concurrents give elaborate separate opinions, agreeing in the result, but for reasons not always the same; and, to the extent of that difference, invalidating the reasons of the Court, and lessening the weight of its decision. So that, upon the head of unanimity, the difference again in

---

tion was then presented, how it was possible for the judicial mind to conceive that the United States Government, created solely by the Constitution, could, by a lawful treaty, acquire territory over which the acquiring power had no jurisdiction to hold and govern it, by force of the instrument under whose authority the country was acquired; and the foregoing was the conclusion of this Court on the proposition. What was there announced, was most deliberately done, and with a purpose. The only question here is, as I think, how far the power of Congress is limited."—*Mr. Justice Catron, concurring.*

"My opinion is, that the third article of the treaty of 1803, ceding Louisiana to the United States, stands protected by the Constitution, and cannot be repealed by Congress. And, secondly, that the act of 1820, known as the Missouri Compromise, violates the most leading features of the Constitution—a feature on which the Union depends, and which secures to the respective States and their citizens an entire EQUALITY of rights, privileges, and immunities."—*Same.*

"It would certainly be a subject of regret that the conclusions of the Court have not been assented to by all of its members, if I did not know from its history, and my own experience, how rarely it has happened that the judges have been unanimous upon Constitutional questions of moment, and if our decision in this case had not been made by as large a majority of them as has been usually had on constitutional questions of importance. Two of the judges, Messrs. Justices M'Lean and Curtis, dissent from the opinion of the Court. A third, Mr. Justice Nelson, gives a separate opinion upon a single point in the case, with which I concur, assuming that the Circuit Court had jurisdiction; but he abstains altogether from expressing any opinion upon the eighth section of the act of 1820, known commonly as the Missouri Compromise law; and six of us declare that it was unconstitutional."—*Mr. Justice Wayne.*

favor of our ancestors is as a mountain to a mustard seed. And then, again, in these differences of opinion the geographical line which divides the free from the slave States was palpably developed, while no such line was ever seen in the Congress decisions. To conclude this head, it is to be remembered that two Justices of the Court who had voted for the Missouri Compromise, (Messrs. Baldwin, of Pennsylvania, and Philip P. Barbour, of Virginia,) and became judges afterwards, had died before the decision—who, if they had lived, and retained their former opinions, would have made the majority the other way.* —7. Weight of reasons on each side. This is a difficult point of comparison, as the Court points to no clause in the Constitution on which it relies to overturn the practice of seventy years. Its great labor seems to have been, by a careful verbal examination of the Constitution, to prove that it did not authorize Congress to legislate upon slavery—an unnecessary labor, as the whole territorial legislation of Congress, from the 7th day of August, 1789, has been independent of the Constitution, and incompatible with it, and for the endless reason that the Constitution was not made for Territories, nor extends to them, nor gives them a single *right* under it. Naming no clause which gives the right of carrying slaves into Territories against an act of Congress, they derive it from general political considerations founded in the equality of States, the common right of all to the enjoyment of the common territory, and the denial of that

* The Boston Law Reporter for June, 1857, contains an article ascribed to John Lowell and Horace Gray, jr., Esquires, two well-known legal gentlemen of Boston, in which the discrepancies among the members of the Court, on another point in the Dred Scott case, show the judgment of Courts to be too uncertain to be admitted as a political expounder of the Constitution. Thus:

"As to the question, "Can a negro be a citizen of the United States?" It has been commonly supposed that the Court decided this question in the negative. This is a mistake. From the form in which it was presented, it was very doubtful whether it was before the Court for a decision. Four of the nine judges thought that it was; these were the Chief Justice, and Justices Wayne and Daniel, who answer the question in the negative, and Justice Curtis, who answered it in the affirmative. Of the judges who gave no opinion on the point, one (Judge M'Lean) declares that if he answered the question at all it would be in the affirmative; Judge Catron, when Chief Justice of the Supreme Court of Tennessee, gave an opinion directly involving an affirmative answer to the question; the three other judges give no clue to their opinions. On this question, then, the Court stands thus: Three in the affirmative, three in the negative, and three silent."

right in the prohibition of slavery. In this general way the Court gets its authority, the powers and rights for which it contends seeming to ooze out of the body of the Constitution in a sort of political insensible perspiration, which being collected and condensed, form little streams leading to the conclusions they arrive at—running in different channels, but falling into the same gulf.* Such invisible, impalpable exudations cannot be weighed as reasons, and besides, had been all addressed in vain to the political power—to Congress itself—to get it to do what the Court has done. On the other hand, all the reasons for the old opinions are palpable and visible, have been seen and handled for seventy years, and always the same thing: Sovereignty, and Proprietorship, and a right to make rules and regulations respecting the territory of the United States. Between the weight of reasons, impalpable and invisible on one side, and those which have been seen and felt, and by all beholders for two generations, on the other, there is no rule of comparison

---

* "It appears, however, from what has taken place at the bar, that notwithstanding the language of the Constitution, and the long line of legislative and executive precedents under it, three different and opposite views are taken of the power of Congress respecting slavery in the Territories.

"One is, that though Congress can make a regulation prohibiting slavery in a Territory, they cannot make a regulation allowing it; another is, that it can neither be established nor prohibited by Congress, but that the people of the Territory, when organized by Congress, can establish or prohibit slavery; while the third is, that the Constitution itself secures to every citizen who holds slaves, under the laws of any State, the indefeasible right to carry them into any Territory, and there hold them as property.

"No particular clause of the Constitution has been referred to at the bar in support of either of these views. The first seems to be rested upon general considerations concerning the social and moral evils of slavery, its relation to republican Governments, its inconsistency with the Declaration of Independence, and with natural right.

"The second is drawn from considerations equally general, concerning the right of self-government, and the nature of the political institutions which have been established by the people of the United States.

"While the third is said to rest upon the equal right of all citizens to go with their property upon the public domain; and the inequality of a regulation which would admit the property of some and exclude the property of other citizens; and, inasmuch as slaves are chiefly held by citizens of those particular States where slavery is established, it is insisted that a regulation excluding slavery from a Territory operates, practically, to make an unjust discrimination between citizens of different States, in respect to their use and enjoyment of the territory of the United States."—*Mr. Justice Curtis.*

which can reach the case; and the task of comparing them must be given up.

So that the decisions of the Court tried by all the tests of comparison—numbers on each side, qualifications for right decision, tranquillity of times, freedom from party; jurisdiction, unanimity, precedents, antiquity, and weight of reason—sink out of view in the presence of the old, established, invariable, and venerable practice of our ancestors.

One further remark will conclude this conclusion. The Court dwells upon the supposed unconstitutionality of any regulation which would prevent a master from taking his slaves with him to a Territory. Why, the master himself may be prevented from going, or turned out after he gets there. From the day of becoming a landholder, the old Continental Congress first, and the Federal Congress since, have exercised the right of every other landholder to prevent trespasses, intrusions, and settlements upon their territory, expelling with military force, and punishing with fine and damages, the violator of its rules. This began under the Confederation, and has continued ever since.* All the old settlers on the frontiers can remember the dragooning the settlers on the United States territory, driving them off, and destroying their houses and growing crops. All can remember the old familiar operation of cutting up a Territory, running a line through it, giving one half to the Indians, and driving the white people from it, and their slaves also.†

---

* *Resolved*, That the Secretary at War, to whom was referred the letter from Major Wyllis, of the 16th instant, direct the commanding officer of the troops of the United States on the Ohio, to take immediate and efficient measures for dispossessing a body of men who have, in a lawless and unauthorized manner, taken possession of port St. Vincent's (Vincennes), in defiance of the proclamation and authority of the United States, and that he employ the whole, or such part of the force under his command, as he shall judge necessary to accomplish the object.—*Journal of the old Congress*, 1787.

† The last instance of this kind, and a strong one it was, was in the year 1828, when the organized Territory of Arkansas was amputated; a slip 40 miles wide and 300 long, with its counties and settlements, was cut off and transferred to the Cherokee Indians, and the inhabitants, with their herds, and flocks, and slaves, were driven from their homes. The boundaries of the Territory had been fixed by Congress in 1824; the Indian title had been extinguished; it was open to settlement, laid off into counties, and Courts held in them by judges appointed by the United States. Yet by a treaty with the Cherokees, it was agreed to give up these 12,000 square miles to the Cherokees, and "to remove all white persons, and also all others, from the west of said line,

Such is the power which Congress exercises over its territory, and with which the Constitution has nothing to do.

To sum up, in a few words, the results of this Examination, and to present the conclusions under a single view, and it is shown that the Constitution was not made for Territories, and does not include them—that it cannot be extended to them by law, and if it could, would be barren and fruitless without law to put it into operation—that no law could be made *under* it to give any help to the slaveholder, either in recovering his property, if the slave ran away, or in bringing back for justice the fugitive felon that should steal it; or in getting protection from the Federal Government against revolt, or in that acknowledgment of property in the slave which results from his federal taxation. In no one of these cases, nor in any other one which can be imagined, can any law be made *under* the Constitution to help the slave-owner, for every provision in that instrument which relates to slavery is confined to States; and the owner must be thrown upon the ordinance of 1787, and the power of Congress, independent of the Constitution, for every species of protection which he may need about that property.

I have performed an unpleasant task, but unavoidable. I have been on the kindest personal terms with the judges, and in my long senatorial service, and as part of the appointing power, have cordially given my voice for the elevation of each of them to the honorable stations they hold—for every one except Mr. Justice Curtis, appointed since the termination of my service. I am a friend to the Supreme Court as an institution—as a high and essential part of our system—and would not willingly derogate from its respect, or impair its utility. But the whole system, of which it is a part, and the whole people, of whom its members are a few, are overruling considerations; and the evil of the late decision being actually upon us, going

---

and keep them away." And this treaty, against an urgent opposition, was ratified by Southern votes, and carried into effect by Southern votes in the House of Representatives, to the almost ruin of the State of Arkansas, reducing her to a state of the middle or small class, when, from her frontier position, national policy required her to be strong and powerful, with which view her boundaries were fixed in 1824. The people were driven off, and Congress afterwards made them indemnity in other land, but that came from the bounty of Congress, and was no contract with the people who were driven off, as any proprietor might drive people from his land.

into parties,* entering into elections, giving the rule for the appointment of all future federal judges, establishing a new party test, bringing the federal judiciary into the vortex of federal politics, and developing still more strongly the geographical line which divides us; seeing all these evils now upon us, and others to come, I have found it impossible to remain silent, or to have said less. I am among the last of those who, acting with the generations that are passed, still adhere to their teachings. I labor to preserve what they established, lamenting that the task had not fallen into abler hands. A few years earlier, and the preservation of the Missouri Compromise would have found its adequate defender in one of its greatest architects, and the integrity of the Constitution would have found its champion in its great expounder; but Clay and Webster are gone; and, before them, went Pinkney and Lowndes, gloriously identified with the work which recent hands have just torn down. And of those who survive, and who stood by them in their great efforts, and still stand where they stood, I am one of the few—no longer in power, but still in armor when the works of our fathers are in danger. I write for no party, but for all men who venerate the works of our ancestors, and who wish to see our Government kept on the foundations on which they placed it.

---

* So entirely has it gone into parties, that it is often a question (along the borders of the free and slave line) of profit, or loss, to adopt or denounce it. In one case, on the north side of the line, which I noted, the convention found itself in a state of impossibility from the inability to determine on which side the loss or gain would be. One delegate proposed its adoption, because it would give them strength to the South; another objected that they would lose more in the North than they would gain in the South. And opinions being about equally balanced, the upshot was, that the decision was neither adopted nor condemned!

APPENDIX.

I.

PROPOSED EXTENSION OF THE CONSTITUTION OF THE UNITED STATES TO THE TERRITORIES, WITH A VIEW TO MAKE IT CARRY SLAVERY INTO CALIFORNIA, UTAH, AND NEW MEXICO.

(From the Thirty Years' View: Vol. II., Chap. 182.)

THE treaty of peace with Mexico had been ratified in the session of 1847–'48, and all the ceded Territory became subject to our Government, and needing the immediate establishment of territorial governments: but such were the distractions of the slavery question, that no such governments could be formed, nor any law of the United States extended to these newly acquired and orphan dominions. Congress sat for six months after the treaty had been ratified, making vain efforts to provide governments for the new Territories, and adjourning without accomplishing the work. Another session had commenced, and was coming to a close with the same fruitless result. Bills had been introduced, but they only gave rise to heated discussion. In the last days of the session, the civil and diplomatic appropriation bill, commonly called the general appropriation bill—the one which provides annually for the support of the Government, and without the passage of which the Government would stop, came up from the House to the Senate. It had received its consideration in the Senate, and was ready to be returned to the House, when Mr. Walker, of Wisconsin, moved to attach to it, under the name of amendment, a section providing a temporary government for the ceded Territories, and extending an enumerated list of acts of Congress to them. It was an unparliamentary and disorderly proposition, the proposed amendment being incongruous to the matter of the appropriation bill, and in plain violation of the obvious principle which forbade extraneous matter, and especially that which was vehemently contested,

from going into a bill upon the passage of which the existence of the Government depended. The proposition met no favor; it would have died out if the mover had not yielded to a southern solicitation to insert the extension of the Constitution into his amendment, so as to extend that fundamental law to those for whom it was never made, and where it was inapplicable, and impracticable. The novelty and strangeness of the proposition called up Mr. Webster, who said:—

"It is of importance that we should seek to have clear ideas and correct notions of the question which this amendment of the member from Wisconsin has presented to us; and especially that we should seek to get some conception of what is meant by the proposition, in a law, to 'extend the Constitution of the United States to the Territories.' Why, sir, the thing is utterly impossible. All the legislation in the world, in this general form, could not accomplish it. There is no cause for the operation of the legislative power in such a manner as that. The Constitution—what is it? We extend the Constitution of the United States by law to Territory! What is the Constitution of the United States? Is not its very first principle, that all within its influence and comprehension shall be represented in the legislature which it establishes, with not only a right of debate and a right to vote in both Houses of Congress, but a right to partake in the choice of the President and Vice President? And can we by law extend these rights, or any of them, to a Territory of the United States? Every body will see that it is altogether impracticable. It comes to this, then, that the Constitution is to be extended as far as practicable; but how far that is, is to be decided by the President of the United States, and therefore he is to have absolute and despotic power. He is the judge of what is suitable, and what is unsuitable; and what he thinks suitable is suitable, and what he thinks unsuitable is unsuitable. He is '*omnis in hoc;*' and what is this but to say, in general terms, that the President of the United States shall govern this Territory as he sees fit till Congress makes further provision. Now, if the gentleman will be kind enough to tell me what principle of the Constitution he supposes suitable, what discrimination he can draw between suitable and unsuitable which he proposes to follow, I shall be instructed. Let me say, that in this general sense there is no such thing as extending the Constitution. The Constitution is extended over the United States, and over nothing else. It cannot be extended over any thing except over the old States and the new States that shall come in hereafter, when they do come in. There is a want of accuracy of ideas in this respect that is quite remarkable among

eminent gentlemen, *and especially professional and judicial gentlemen.* It seems to be taken for granted that the right of trial by jury, the *habeas corpus*, and every principle designed to protect personal liberty, is extended by force of the Constitution itself over every new Territory. That proposition cannot be maintained at all. How do you arrive at it by any reasoning or deduction? It can be only arrived at by the loosest of all possible constructions. It is said that this must be so, else the right of the *habeas corpus* would be lost. Undoubtedly these rights must be conferred by law, before they can be enjoyed in a Territory."

It was not Mr. Walker, of Wisconsin, the mover of the proposition, that replied to Mr. Webster: it was the prompter of the measure that did it, and in a way to show immediately that this extension of the Constitution to Territories was nothing but a new scheme for the extension of slavery. Denying the power of Congress to legislate upon slavery in Territories—finding slavery actually excluded from the ceded Territories, and desirous to get it there—Mr. Calhoun, the real author of Mr. Walker's amendment, took the new conception of carrying the Constitution into them; which arriving there, and recognizing slavery, and being the supreme law of the land, it would override the anti-slavery laws of the Territory, and plant the institution of slavery under its Ægis, and above the reach of any territorial law, or law of Congress to abolish it. He, therefore, came to the defence of his own proposition, and thus replied to Mr. Webster:—

"I rise, not to detain the Senate to any considerable extent, but to make a few remarks upon the proposition first advanced by the Senator from New Jersey, fully endorsed by the Senator from New Hampshire, and partly endorsed by the Senator from Massachusetts, that the Constitution of the United States does not extend to the Territories. That is the point. I am very happy, sir, to hear this proposition thus asserted, for it will have the effect of narrowing very greatly the controversy between the North and the South as it regards the slavery question in connection with the Territories. It is an implied admission on the part of those gentlemen, that, if the Constitution does extend to the Territories, the South will be protected in the enjoyment of its property—that it will be under the shield of the Constitution. You can put no other interpretation upon the proposition which the gentlemen have made, than that the Constitution does not extend to the Territories. Then the

simple question is, does the Constitution extend to the Territories, or does it not extend to them? Why, the Constitution interprets itself. It pronounces itself to be the supreme law of the land."

When Mr. Webster heard this syllogistic assertion, that the Constitution being the supreme law of the land, and the Territories being a part of the land, *ergo* the Constitution being extended to them would be their supreme law: when he heard this, he called out from his seat—"*What land?*" Mr. Calhoun replied, saying:—

"The land; the Territories of the United States are a part of the land. It is the supreme law, not within the limits of the States of this Union merely, but wherever our flag waves—wherever our authority goes, the Constitution in part goes, not all its provisions certainly, but all its suitable provisions. Why, can we have any authority beyond the Constitution? I put the question solemnly to gentlemen; if the Constitution does not go there, how are we to have any authority or jurisdiction whatever? Is not Congress the creature of the Constitution; does it not hold its existence upon the tenure of the continuance of the Constitution; and would it not be annihilated upon the destruction of that instrument, and the consequent dissolution of this confederacy? And shall we, the creature of the Constitution, pretend that we have any authority beyond the reach of the Constitution? Sir, we were told, a few days since, that the courts of the United States had made a decision that the Constitution did not extend to the Territories without an act of Congress. I confess that I was incredulous, and am still incredulous that any tribunal, pretending to have a knowledge of our system of government, as the courts of the United States ought to have, could have pronounced such a monstrous judgment. I am inclined to think that it is an error which has been unjustly attributed to them; but if they have made such a decision as that, I for one say, that it ought not and never can be respected. The Territories belong to us; they are ours; that is to say, they are the property of the thirty States of the Union; and we, as the representatives of those thirty States, have the right to exercise all that authority and jurisdiction which ownership carries with it."

Mr. Webster replied, with showing that the Constitution was made for States, not Territories—that no part of it went to a Territory unless specifically extended to it by act of Congress—that the Territories from first to last were governed as Congress

chose to govern them, independently of the Constitution, and often contrary to it, as in denying them representatives in Congress, a vote for President and Vice President, the protection of the Supreme Court:—that Congress was constantly doing things in the Territories without constitutional objection (as making mere local roads and bridges), which could not be attempted in a State. He argued:—

"The Constitution, as the gentleman contends, extends over the Territories. How does it get there? I am surprised to hear a gentleman so distinguished as a strict constructionist, affirming that the Constitution of the United States extends to the Territories, without showing us any *clause* in the Constitution in any way leading to that result; and to hear the gentleman maintaining that position without showing us any way in which such a result could be inferred, increases my surprise.

"One idea further upon this branch of the subject. The Constitution of the United States extending over the Territories, and no other law existing there! Why, I beg to know how any government could proceed, without any other authority existing there than such as is created by the Constitution of the United States? Does the Constitution of the United States settle titles to land? Does it regulate the rights of property? Does it fix the relations of parent and child, guardian and ward? The Constitution of the United States establishes what the gentleman calls a confederation for certain great purposes, leaving all the great mass of laws which is to govern society to derive their existence from State enactments. That is the just view of the state of things under the Constitution. And a State or Territory that has no law but such as it derives from the Constitution of the United States, must be entirely without any State or territorial government. The honorable Senator from South Carolina, conversant with the subject as he must be, from his long experience in different branches of the Government, must know that the Congress of the United States have established principles in regard to the Territories that are utterly repugnant to the Constitution. The Constitution of the United States has provided for them an independent judiciary; for the judge of every court of the United States holds his office upon the tenure of good behavior. Will the gentleman say that in any court established in the Territories, the judge holds his office in that way? He holds it for a term of years, and is removable at Executive discretion. How did we govern Louisiana before it was a State? Did the writ of *habeas corpus* exist in Louisiana during its territorial existence? Or the right to trial by jury? Who ever heard of trial by jury there before the law creating the territorial government

gave the right to trial by jury? No one. And I do not believe that there is any new light now to be thrown upon the history of the proceedings of this Government in relation to that matter. When new territory has been acquired it has always been subject to the laws of Congress—to such laws as Congress thought proper to pass for its immediate government; for its government during its territorial existence, during the preparatory state in which it was to remain until it was ready to come into the Union as one of the family of States."

All this was sound constitutional law; or, rather, was veracious history, showing that Congress governed as it pleased in the Territories, independently of the Constitution, and often contrary to it; and consequently, that the Constitution did not extend to it. Mr. Webster then showed the puerility of the idea that the Constitution went over the Territories because they were "*land*," and exposed the fallacy of the supposition that the Constitution, even if extended to a Territory, could operate there of itself, and without a law of Congress made under it. This fallacy was exposed by showing that Mr. Calhoun, in quoting the Constitution as the supreme law of the land, had omitted the essential words which were part of the same clause, and which couples with that supremacy the laws of Congress made in pursuance of the Constitution. Thus:—

"The honorable Senator from South Carolina argues that the Constitution declares itself to be the law of the land, and that, therefore, it must extend over the Territories. 'The land,' I take it, means the land over which the Constitution is established, or, in other words, it means the States united under the Constitution. But does not the gentleman see at once that the argument would prove a great deal too much? The Constitution no more says that the Constitution itself shall be the supreme law of the land, than it says that the laws of Congress shall be the supreme law of the land. It declares that the Constitution and the law of Congress passed under it shall be the supreme law of the land."

The question took a regular slavery turn, Mr. Calhoun avowing his intent to be to carry slavery into the Territories under the wing of the Constitution, and openly treated as enemies to the South all that opposed it. Having taken the turn of a slavery question, it gave rise to all the dissension of which that subject had become the parent since the year 1835. By a close vote, and before the object had been understood by all the Sena-

tors, the amendment was agreed to in the Senate, but immediately disagreed to in the House, and a contest brought on between the two Houses by which the great appropriation bill, on which the existence of the Government depended, was not passed until after the constitutional expiration of the Congress at midnight of the third of March, and was signed by Mr. Polk (after he had ceased to be President) on the 4th of March—the law and his approval being antedated of the 3d, to prevent its invalidity from appearing on the face of the act. Great was the heat which manifested itself, and imminent the danger that Congress would break up without passing the general appropriation bill; and that the Government would stop until a new Congress could be assembled—many of the members of which remained still to be elected. Many members refused to vote after midnight—which it then was. Mr. Cass said:—

"As I am among those who believe that the term of this session has expired, and that it is incompetent for us now to do business, I cannot vote upon any motion. I have sat here as a mere looker on. I merely desire to explain why I took no part in the proceedings."

Mr. Yulee, of Florida, moving an adjournment, said:—

"I should be very sorry, indeed, to make any proposition which may in any degree run counter to the general sentiment of the Senate; but I feel bound, laboring under the strong conviction that I do, to arrest at every step, and by every means, any recorded judgment of the Senate at a time when we are not legally engaged in the discharge of our senatorial duties. I agree entirely in the view taken by the Senator from Michigan."

Mr. Turney, of Tennessee, said:—

"I am one of those who believe that we have no right to sit here. The time has expired; one-third of this body are not present at all, and the others have no right to sit here as a part of Congress. But a motion has been made for adjournment, and the presiding officer has refused to entertain that motion. This being the case, I must regard all that is done as done in violation of the Constitution, or rather not in pursuance of it. It appears to me that we sit here more in the character of a town meeting than as the Senate of the United States, and that what we do is no more binding on the American people than if we did

it at a town meeting. I shall express no opinion by saying yea or nay on the question before the Senate. At the same time, I protest against it, as being no part of the constitutional proceedings of the Senate of the United States."

Mr. Benton, and many others, declined to vote. The House of Representatives had ceased to act, and sent to the Senate the customary message of adjournment. The President, who, according to the usage, had remained in the Capitol till midnight to sign bills, had gone home. It was four o'clock in the morning of the fourth, and the greatest confusion and disorder prevailed. Finally Mr. Webster succeeded in getting a vote, by which the Senate receded from the amendment it had adopted, extending the Constitution to the Territories; and that recession leaving the appropriation bill free from the encumbrance of the slavery question, it was immediately passed.

This attempt, pushed to the verge of breaking up the Government in pursuit of a newly invented slavery dogma, was founded in errors too gross for misapprehension. In the first place, as fully shown by Mr. Webster, the Constitution was not made for Territories, but for States. In the second place, it cannot operate any where, not even in the States for which it was made, without acts of Congress to enforce it. This is true of the Constitution in every particular. Every part of it is inoperative until put into action by a statute of Congress. The Constitution allows the President a salary; he cannot touch a dollar of it without an act of Congress. It allows the recovery of fugitive slaves: you cannot recover one without an act of Congress. And so of every clause it contains. The proposed extension of the Constitution to Territories, with a view to its transportation of slavery along with it, was then futile and nugatory, until an act of Congress should be passed to vitalize slavery under it. So that, if the extension had been declared by law, it would have answered no purpose except to widen the field of the slavery agitation—to establish a new point of contention—to give a new phase to the embittered contest—and to alienate more and more from each other the two halves of the Union. But the extension was not declared. Congress did not extend the Constitution to the Territories. The proposal was rejected in both Houses; and immediately the crowning dogma

is invented, that the Constitution goes of itself to the Territories without an act of Congress, and executes itself, so far as slavery is concerned, not only without legislative aid, but in defiance of Congress and the people of the Territory. This is the last slavery creed of the Calhoun school, and the one on which his disciples now stand—and not with any barren foot. They apply the doctrine to existing Territories, and make acquisitions from Mexico for new applications. It is impossible to consider such conduct as any thing else than as one of the devices for "*forcing the issue with the North*," which Mr. Calhoun in his confidential letter to the member of the Alabama Legislature avows to have been his policy since 1835, and which he avers he would then have effected, if the members from the slave States had stood by him.

II.

THE SLAVERY AGITATION: DISUNION: KEY TO MR. CALHOUN'S POLICY: FORCING THE ISSUE: MODE OF FORCING IT.

(From the Thirty Years' View: Vol. II., Chap. 16S.)

In the course of this year (1847), and some months after the submission of his resolutions in the Senate denying the right of Congress to abolish slavery in a Territory, Mr. Calhoun wrote a letter to a member of the Alabama Legislature, which furnishes the key to unlock his whole system of policy in relation to the slavery agitation, and its designs, from his first taking up the business in Congress, in the year 1835, down to the date of the letter; and thereafter. The letter was in reply to one asking his opinion "*as to the steps which should be taken*" to guard the rights of the South; and was written in a feeling of personal confidence to a person in a condition to take steps; and which he has since published to counteract the belief that Mr. Calhoun was seeking the dissolution of the Union. The letter disavows such a design, and at the same time proves it—recommends forcing the issue between the North and the South, and lays down the manner in which it should be done. It opens with this paragraph:—

"I am much gratified with the tone and views of your letter, and

concur entirely in the opinion you express, that instead of shunning, we ought to court the issue with the North on the slavery question. I would even go one step further, and add that it is our duty—due to ourselves, to the Union, and our political institutions, to *force* the issue on the North. We are now stronger relatively than we shall be hereafter, politically and morally. Unless we bring on the issue, delay to us will be dangerous indeed. It is the true policy of those enemies who seek our destruction. Its effects are, and have been, and will be to weaken us politically and morally, and to strengthen them. Such has been my opinion from the first. Had the South, or even my own State backed me, I would have *forced* the issue on the North in 1835, when the spirit of abolitionism first developed itself to any considerable extent. It is a true maxim, to meet danger on the frontier, in politics as well as war. Thus thinking, I am of the impression, that if the South act as it ought, the Wilmot Proviso, instead of proving to be the means of successfully assailing us and our peculiar institution, may be made the occasion of successfully asserting our equality and rights, by enabling us to *force* the issue on the North. Something of the kind was indispensable to rouse and unite the South. On the contrary, if we should not meet it as we ought, I fear, greatly fear, our doom will be fixed. It would prove that we either have not the sense or spirit to defend ourselves and our institutions."

The phrase "forcing the issue" is here used too often, and for a purpose too obvious, to need remark. The reference to his movement in 1835 confirms all that was said of that movement at the time by Senators from both sections of the Union, and which has been related in chapter 131, vol. i., of the Thirty Years View. At that time Mr. Calhoun characterized his movement as defensive—as done in a spirit of self-defence: it was then characterized by Senators as aggressive and offensive: and it is now declared in this letter to have been so. He was then openly told that he was playing into the hands of the abolitionists, and giving them a champion to contend with, and the elevated theatre of the American Senate for the dissemination of their doctrines, and the production of agitation and sectional division. All that is now admitted, with a lamentation that the South, and not even his own State, would stand by him then in forcing the issue. So that chance was lost. Another was now presented. The Wilmot Proviso, so much deprecated in public, is privately saluted as a fortunate event, giving another chance for forcing the issue. The letter proceeds:—

"But in making up the issue, we must look far beyond the proviso. It is but one of many acts of aggression, and, in my opinion, by no means the most dangerous or degrading, though more striking and palpable."

In looking beyond the proviso Mr. Calhoun took up the recent act of the General Assembly of Pennsylvania, repealing the slave sojournment law within her limits, and obstructing the recovery of fugitive slaves, saying:—

"I regard the recent act of Pennsylvania, and laws of that description, passed by other States, intended to prevent or embarrass the reclamation of fugitive slaves, or to liberate our domestics when travelling with them in non-slaveholding States, as unconstitutional. Insulting as it is, it is even more dangerous. I go further, and hold that if we have a right to hold our slaves, we have a right to hold them in peace and quiet, and that the toleration, in the non-slaveholding States, of the establishment of societies and presses, and the delivery of lectures, with the express intention of calling in question our right to our slaves, and of seducing and abducting them from the service of their masters, and finally overthrowing the institution itself, is not only a violation of international laws, but also of the Federal compact. I hold, also, that we cannot acquiesce in such wrongs, without the certain destruction of the relation of master and slave, and without the ruin of the South."

The acts of Pennsylvania here referred to are justly complained of, but with the omission to tell that these injurious acts were the fruit of his own agitation policy, and in his own line of forcing issues; and that the repeal of the sojournment law, which had subsisted since the year 1780, and the obstruction of the fugitive slave act, which had been enforced since 1793, only took place twelve years after he had commenced slavery agitation in the South, and were legitimate consequences of that agitation, and of the design to force the issue with the North. The next sentence of the letter reverts to the Wilmot Proviso, and is of momentous consequence as showing that Mr. Calhoun, with all his public professions in favor of compromise and conciliation, was secretly opposed to any compromise or adjustment, and actually considered the defeat of the proviso as a misfortune to the South. Thus:—

"With this impression, I would regard any compromise or adjust-

ment of the proviso, or even its defeat, without meeting the danger in its whole length and breadth, as very unfortunate for us. It would lull us to sleep again, without removing the danger, or materially diminishing it."

So that, while this proviso was, publicly, the Pandora's box which filled the Union with evil, and while it was to Mr. Calhoun and his friends the theme of endless deprecation, it was secretly cherished as a means of keeping up discord, and forcing the issue between the North and the South. Mr. Calhoun then proceeds to the serious question of disunion, and of the manner in which the issue could be forced.

"This brings up the question, how can it be so met, *without resorting to the dissolution of the Union?* I say without its dissolution, for in my opinion, a high and sacred regard for the Constitution, as well as the dictates of wisdom, make it our duty in this case, as well as all others, not to resort to, or even to look to that extreme remedy, until all others have failed, and then only in defence of our liberty and safety. There is, in my opinion, but one way in which it can be met; and that is the one indicated in my letter to Mr. ———, and to which you allude in yours to me, viz., by retaliation. Why I think so, I shall now proceed to explain."

Then follows an argument to justify retaliation, by representing the Constitution as containing provisions, he calls them stipulations, some in favor of the slaveholding, and some in favor of the non-slaveholding States, and the breach of any of which, on one side, authorizes a retaliation on the other; and then declaring that Pennsylvania and other States have violated the provision in favor of the slave States in obstructing the recovery of fugitive slaves, he proceeds to explain his remedy, saying:—

"There is and can be but one remedy short of disunion, and that is to retaliate on our part, by refusing to fulfil the stipulations in their favor, or such as we may select, as the most efficient. Among these, the right of their ships and commerce to enter and depart from our ports is the most effectual, and can be enforced. That the refusal on their part would justify us to refuse to fulfil on our part those in their favor, is too clear to admit of argument. That it would be effectual in compelling them to fulfil those in our favor can hardly be doubted, when the im-

mense profit they make by trade and navigation out of us is regarded; and also the advantages we would derive from the direct trade it would establish between the rest of the world and our ports."

Retaliation by closing the ports of the State against the commerce of the offending State: and this called a constitutional remedy, and a remedy short of disunion. It is, on the contrary, a flagrant breach of the Constitution, and disunion itself, and that at the very point which caused the Union to be formed. Every one acquainted with the history of the formation of the Federal Constitution, knows that it grew out of the single question of commerce—the necessity of its regulation between the States to prevent them from harassing each other, and with foreign nations to prevent State rivalries for foreign trade. To stop the trade with any State is, therefore, to break the Union with that State; and to give any advantage to a foreign nation over a State, would be to break the Constitution again in the fundamental article of its formation; and this is what the retaliatory remedy of commercial non-intercourse arrives at—a double breach of the Constitution—one to the prejudice of sister States, the other in favor of foreign nations. For immediately upon this retaliation upon a State, and as a consequence of it, a great foreign trade is to grow up with all the world. The letter proceeds with further instructions upon the manner of executing the retaliation:—

"My impression is, that it should be restricted to *sea-going* vessels, which would leave open the trade of the valley of the Mississippi to New Orleans by river, and to the other Southern cities by railroad; and tend thereby to detach the North-western from the North-eastern States."

This discloses a further feature in the plan of forcing the issue. The North-eastern States were to be excluded from Southern maritime commerce: the North-western States were to be admitted to it by railroad, and also allowed to reach New Orleans by the Mississippi River. And this discrimination in favor of the North-western States was for the purpose of detaching them from the North-east. Detach is the word. And that word signifies to separate, disengage, disunite, part from: so that the scheme of disunion contemplated the inclusion of the North-western States in the Southern division. The State of

Missouri was one of the principal of these States, and great efforts were made to gain her over, and to beat down Senator Benton who was an obstacle to that design. The letter concludes by pointing out the only difficulty in the execution of this plan, and showing how to surmount it.

"There is but one practical difficulty in the way; and that is, to give it force, it will require the co-operation of all the slaveholding States lying on the Atlantic Gulf. Without that, it would be ineffective. To get that is the great point, and for that purpose a convention of the Southern States is indispensable. Let that be called, and let it adopt measures to bring about the co-operation, and I would underwrite for the rest. The non-slaveholding States would be compelled to observe the stipulations of the Constitution in our favor, or abandon their trade with us, or to take measures to coerce us, which would throw on them the responsibility of dissolving the Union. Which they would choose, I do not think doubtful. Their unbounded avarice would, in the end, control them. Let a convention be called—let it recommend to the slaveholding States to take the course advised, giving, say one year's notice, before the acts of the several States should go into effect, and the issue would fairly be made up, and our safety and triumph certain."

This is the only difficulty—the want of a co-operation of all the Southern Atlantic States: and to surmount that, the indispensability of a convention of the Southern States is fully declared. This was going back to the starting point—to the year 1835—when Mr. Calhoun first took up the slavery agitation in the Senate, and when a convention of the slaveholding States was as much demanded then as now, and that twelve years before the Wilmot Proviso—twelve years before the Pennsylvania unfriendly legislation—twelve years before the insult and outrage to the South, in not permitting them to carry their local laws with them to the Territories, for the protection of their slave property. A call of a Southern convention was as much demanded then as now; and such conventions often actually attained; but without accomplishing the object of the prime mover. No step could be got to be taken in those conventions towards dividing and sectionalizing the States, and after a vain reliance upon them for seventeen years, a new method has been fallen upon: and this confidential letter from Mr. Calhoun to a member of the Alabama Legislature of 1847, has come to light,

to furnish the key which unlocks his whole system of slavery agitation which he commenced in the year 1835. That system was to force issues upon the North under the pretext of self-defence, and to sectionalize the South, preparatory to disunion, through the instrumentality of sectional conventions, composed wholly of delegates from the slaveholding States. Failing in that scheme of accomplishing the purpose, a new one was fallen upon, which will disclose itself in its proper place.

III.

REVIEW OF PRESIDENT PIERCE'S ANNUAL MESSAGE TO CONGRESS, OF DECEMBER, 1856, SO FAR AS THE SAME RELATES TO THE ABROGATION OF THE MISSOURI COMPROMISE ACT: WITH A VIEW TO EXPOSE AND CORRECT ITS ERRORS OF FACT AND OF LAW.

I ENTER upon this task with the declaration that I believe this part of the message to have been written by Mr. Pierce's law officer, (Mr. Caleb Cushing,) dominated by his Secretary at War, (Mr. Jefferson Davis,) and that Mr. Pierce is not obnoxious to the strictures I am forced to make, and is only culpable in covering with his name the fallacious statements of others. And with this salvo in behalf of an innocent man, I proceed to the review of the message, first presenting a specimen of the epithets which are lavished upon the act, (and by consequence on its authors,) the abrogation of which is the subject of so much laudation and joy. "A mere nullity," "unconstitutional," "no obligatory force," "an imperfection on the statute book," "objectionable enactment," "a monument of error," "a beacon of warning," "a dead letter in law," "injurious," "conferring no right," "taking away no right," "affecting no sense of permission or prohibition," "a nullity permitted to remain for some years on the statute book," "no moral force," "its repeal a matter of form, being dead of itself," "the statute book rightfully relieved by its repeal of an unconstitutional, injurious, objectionable enactment:" such are the terms (a sample of the quality and a fraction of the quantity) which the message piles up on this healing and pacifying measure of 1820, as if it was intended by a mere accumulation of odious epithets to "crush out" an act which was balm to the wounds of the

country at the time of its enactment, and peace and safety to a distracted Union, for nearly thirty years afterwards. And to whom do these epithets apply? To the twenty-four senators, headed by Pinkney, of Maryland, the jurist and orator, and to the one hundred and thirty-four representatives, headed by Clay and Lowndes, and to the administration of Mr. Monroe, to whom the country was indebted for that beneficent act. To these men these epithets apply. These are the men stigmatized in the message as dolts and ninnies, foolish, if not wicked, and barely escaping the imputation of criminality in consideration of their ignorance and folly. But the stigmatizing does not stop there: it reaches back to Washington, to his cabinet, and the entire Congress of 1789: for Washington and that Congress, in adopting the ordinance of '87, adopted that slavery clause, which, being copied into the Missouri act, has given rise to all this vituperation of this measure, and to all this exultation over its repeal. Nor does the obloquy stop there, but reaches the President, the cabinet, and the Congress of 1845, all of whom, re-enacting the Missouri Compromise, become subject to the obloquy which the message lavishes upon that measure. All these, and the whole body of the American people, who accepted the act, come in for their share of these fine epithets: but there is certainly one who ought to have been excepted, one, who being twice the supporter of the vituperated act, (in Mr. Monroe's cabinet and Tyler's cabinet,) ought to have escaped denunciation, and who, although he had forgotten that support in 1848, could not make Mr. Monroe's letter forget it; nor Mr. Adams's diary forget it; nor the index to the papers filed in the department of State forget it; nor make his own speech of 1838 forget it. This gentleman ought to have been excepted, both as the supporter of the Missouri Compromise in 1820, and of its re-enactment in 1845; and as the favorite statesman of the party which the message represents. And now to the review.

It is a law of Providence, from which there are but few deviations, and of which the abrogation of the Missouri Compromise has given occasion for the largest modern illustration, that those who commit a great wrong are condemned, during the remainder of their lives, to the painful task of inventing excuses and justifications for the delinquent act. So in this case; since

the month of May, 1854, when this deed was done, its authors have been in a permanent state of excuse and justification; and being many, and in possession of the Government, and with the control of many newspapers, and the right of composing official papers and public documents, they have plied the public mind with incessant repetition of these justificatory pieces, each an improvement upon its predecessor in all the qualities which the defence of so bad a cause requires; undaunted mendacity, moral callosity, mental obliquity, Old Bailey attorney perversions of law and evidence. The last annual message of Mr. Pierce was the last opportunity for this defensive pleading, and being the last, it was carefully seized on, and vigorously improved to the best advantage. The message was big with it. It was a large plea, and a bold one, and conspicuously presented. In quantity it filled eleven octavo pages, (leaving but seventeen for all the appropriate subjects which belong to that official paper;) in boldness, it inaugurated a new era in our Presidential messages—the era of historical falsification in those high papers, heretofore considered the sacred receptacle of veracious history; in conspicuity, being thrust into the front of the message, instead of being relegated to its fag-end, where such low matter should go, if, indeed, allowed to enter a message at all; which it never was before. Veracious history must rebuke this first attempt to make the Presidential annual message a vehicle of historical falsification; and the work is easily done, all the facts necessary to the correction of the fallacious statements being of record in the debates and journals of Congress, and other authentic public evidence. These misstatements, after a preliminary one to usher in the others, arrange themselves under three heads: *first*, in what relates to the formation of the Missouri Compromise; *secondly*, in what relates to its abrogation; *thirdly*, in what relates to the present state of parties, and their respective shares in producing the present agitation.

This preliminary misstatement is the assumption, that the issue of the last Presidential election was a national ratification of the abrogation of the Missouri Compromise. No assumption could be more unfounded. That election proved just the reverse of what has been assumed. It was intended that it should be so, (in the nomination and election of some one of the prominent destroyers of the compromise,) and the Convention at Cincinnati was

gorged with office-holding retainers of the administration for that purpose: but no such destroyer of the compromise could be nominated; and no one of them could have been elected if nominated. It was the trump argument in favor of Mr. Buchanan, that he was not one of these destroyers; and, although known to "acquiesce" in the deed after it was done, yet his long and most conspicuous championship of that measure, and his geographical position, led to the belief that he would not improve upon its abrogation, nor complete its iniquities by lending himself to the ulterior designs of its authors. That belief, and the discredit brought upon his opponent by the support of some violent men, (and it is the violent always who impress character upon a party,) who preached against the existence of slavery in the States—against the admission of any more slave States—and against the compromises of the Constitution and of the ordinance of '87, for the surrender of fugitive slaves: it was this belief, and this discredit, which turned the scales in the election; and it required all that both these cardinal causes could do to elect Mr. Buchanan. This is public, undeniable truth; and it requires a courageous and veteran disregard of the laws of veracity to assume the contrary, as the message is made to do.

And now for the enactment of the Missouri Compromise, which the message very properly styles "a political enactment," as it certainly is; and then gives this account of it:—

"The enactment, which established the restrictive geographical line, was acquiesced in rather than approved by the States of the Union. It stood on the Statute Book, however, for a number of years; and the people of the respective States acquiesced in the re-enactment of the principle as applied to the State of Texas; and it was proposed to acquiesce in its further application to the territory acquired by the United States from Mexico. But this proposition was successfully resisted by the representatives from the Northern States, who, regardless of the statute line, insisted upon applying restriction to the new territory generally, whether lying north or south of it, thereby repealing it as a legislative compromise, and, on the part of the North, persistently violating the compact, if compact there was. Thereupon this enactment ceased to have binding virtue in any sense, whether as respects the North or the South; and so in effect it was treated on the occasion of the admission of the State of California, and the organization of the Territories of New Mexico, Utah, and Washington."

This paragraph is characteristic, and exemplifies all the modes of conveying untruths which long ages have invented: direct assertion, fallacious inference, equivocal phrase, and false innuendo. The word "restrictive" has no application to the Compromise Act. It applied exclusively to the State of Missouri, and the attempt to restrain her, as a State, from the admission of slaves. The compromise was a territorial measure, applying exclusively to territory, and establishing, not a restrictive, but a partition line; a line of territorial division, upon the principle of the division of the South-west and North-west Territory by the old Congress in 1787, and sanctioned by the new Congress in 1789. The principle of each was the same, and the dividing line so nearly the same, that the Louisiana line may stand for a continuation of the north-west line, making about equal division, until the South gave away nearly the whole of hers. A compromise is agreed to; a restriction is imposed; and it is falsifying the character of the act of 1820 to call it restrictive. The power of each House of Congress agreed to it; the negative in each was inconsiderable.

Then comes a litter of unfounded suggestions, implied in the word "acquiesce," three times repeated in six lines, and every time pregnant with a fallacious implication—each more glaring than the other. It is the lawyer-like way of saying what Mr. Calhoun said pointedly, that the Missouri Compromise was imposed upon the South by the North, and only acquiesced in because too weak to relieve herself. For it is as notorious as that the South exists, that both these compromises—that by which Missouri and Arkansas became admitted as slave States, and that of 1845 by which Texas (and four more slave States to be made out of her territory) became admitted—were measures of the South, carried by her votes, and the votes of her friends in the free States; and that, in each case, she was so determined upon the measure as to threaten secession from the Union if it was not obtained. This is matter of public history; and therefore, the mendacity of these three implications, in six lines, becomes too flagrant to admit of comment, or to require proof. We proceed to another, the Southern proposal to extend the Missouri Compromise line to the Pacific, or, in the language of the message, "to acquiesce" in the extension; and its defeat by Northern votes. In the first place, that extension was resisted

by others as well as by Northern votes—resisted by all Southern men opposed to planting slavery in new places—and vehemently by Mr. Clay, who repulsed the proposition indignantly when pushed at him by Mr. Davis of Mississippi, declaring, with an emphasis which electrified the Senate, that no power on earth should ever make him vote for slavery in any place where it did not already exist. For that was the nature of the vote involved in this insidiously proposed extension—being directly the reverse of voting for the same line in the ancient Louisiana. Astronomically, the lines were the same: politically, they were opposite: one running through territory all slave, and making one-half free; the other running through territory all free, and making one-half slave. Call this extended line the same! You had as well call black and white the same. And this, in fact, is what the message is made to do, with a reproach to all Northern men who would not agree to spread slavery over the broad expanse of all that half of California, New Mexico and Utah, which lies south of 36° 30′; and it is for not agreeing to convert this great extent of old free soil into new slave soil, that these Northern representatives are thus chid and reproached in the message. Certainly, Mr. Cushing would not so have rebuked them in the year 1836, when he was opposing the admission of Arkansas as a slave State; * or, in the year 1838, when, with Mr. Slade, of Vermont, and with all the abolitionists in the

---

* The extraordinary circumstances under which I rise to address the Committee, impel me to brevity and succinctness; but they would afford me no justification for a passive acquiescence in the admission of Arkansas into the Union, with all the *sins* of its constitution upon its head. The constitution of Arkansas contains a provision, forbidding the legislature to emancipate slaves without the consent of the owner, and forbidding it to pass any law to prevent slaveholders with their slaves from emigrating to the State. This provision of the constitution of Arkansas is condemned by those I represent as anti-republican, as wrong on general principles of civil polity, and as unjust to the inhabitants of the non-slaveholding States. I concur in reprobating such a clause. I cannot, by any vote of mine, ratify or sanction a constitution of government which undertakes in this way to foreclose in advance the progress of civilization and of liberty for ever. The gentleman from Virginia (Mr. Wise), who I cheerfully admit is always frank and honorable in his course upon this floor, has just declared that, as a Southern man, he had felt it to be his duty to come forward and take a stand in behalf of an institution of the South. That institution is slavery. In like manner I feel it to be my duty, as a Northern man, to take a counter stand in conservation of one among the dearest of the institutions of the North. This institution is liberty."—*Mr. Cushing's Speech against the admission of Arkansas.*

House of Representatives, by his efforts to abolish slavery in the District of Columbia, he drove the Southern members to secession from the floor of the House, to consult in a committee room in the basement of the Capitol, upon the decisive step of returning to their constituents. *

Then comes the fundamental falsehood which lies at the foundation of the attack on the Missouri Compromise, affirming that it had been virtually repealed by the negative action of Congress in 1850, in refusing to extend the compromise line to the Pacific, and in refusing to legislate upon slavery in California, New Mexico, Utah and Washington—Washington, as the message says; though there was no Territory of Washington at that time, and the territory which afterwards composed it, had been included in the legislation on Oregon, of which it was a part; and from which that institution was excluded. But, take the statement as it stands, and judge it upon its words; and for that purpose it must be given in its own words: for nothing but itself can do justice to itself in the exhibition of such legerdemain in handling law and facts. And here it is:—

"But this proposition was successfully resisted by the representatives from the Northern States, who, regardless of the statute line, insisted upon applying restriction to the new territory generally, whether lying north or south of it, thereby repealing it as a legislative compromise, and, on the part of the North, persistently violating the compact, if compact there was. Thereupon this enactment ceased to have binding virtue in any sense, whether as respects the North or the South; and so in effect it was treated on the occasion of the admission of the State of California, and the organization of the Territories of New Mexico, Utah and Washington."

Here is a farrago of law and fact for you—a sample of assertion and inference—which ignores truth, reason, common sense, and law logic. A refusal to extend a line is, to repeal it: a refusal to act upon slavery in Territories where it was already

* Of the sixty-three members of the House who pertinaciously backed Mr. Slade during the two days that the struggle continued, one was Mr. Caleb Cushing, then as zealous to abolish slavery in the District of Columbia (for the motion was to instruct a committee to bring in a peremptory bill for that purpose) as he has since shown himself active to abolish all impediments to the general territorial diffusion of slavery—even in the old free territory, once a part of the empire of Montezuma.

abolished by Mexican law is, to violate the Missouri Compact—if there was one. The admission of the State of California with her free constitution, and the organization of the Territories of Utah and New Mexico, without excluding slavery where it was already excluded, was, in effect, to deprive the Missouri Compromise of binding virtue in any sense; and, consequently, to authorize the Congress of 1854 to rub it out of the statute book as being a dead thing, put to death by the Congress of 1850. Happily for the inventors of all this false assertion and preposterous inference, Mr. Clay was dead before they found out that he had, in his compromise measures of 1850, destroyed the Missouri Compromise of 1820. He was not the man to hear such a libel upon himself without instantly blasting, with his indignant invective, both the foul imputation, and its luckless author. But no one of these destroyers of that compromise was so unlucky as to subject himself to the lightning of that reply. They had too much discretion for that. They waited four years for him to be dead, and buried, before the foul imputation was cast upon him: an imputation sufficient to start his spirit from the grave. I was a member of that Congress of 1850, and saw what was done: I was a close observer of his compromise measures, and know what they were: I have examined them all since, and find that I was not mistaken in my recollection of them. And upon all this knowledge, and upon the measures themselves as they now stand on the statute book, I take upon myself to affirm, that the assertion that they repealed, or impaired in any way, the Missouri Compromise Act, is one of the most unfounded assertions which ever fell from the lips of man.

The assertion is, that the compromise measures of 1850 repealed the Missouri Compromise, and established the doctrine of non-interference with slavery in Territories. This repeal, it has been seen, was effected by refusing to extend the line to the Pacific Ocean---certainly a new way of repealing a statute! and the non-interference will be found to be worthy to take its place by the side of such an invention. Certain it is that Congress did not legislate upon slavery in any Territory in 1850; but why? precisely because there was no room for legislation! because the question was then settled, by law, in every inch square of territory belonging to the United States! and settled

to the satisfaction of Congress, and as it was intended to remain for ever, and to be, what was then called, "a finality!" It was settled every where; in the remnant of the old North-west Territory, by the ordinance of '87, re-enacted by the act of Congress of 1789; in all the Territory of Louisiana, by the Missouri Compromise line; in Oregon, by her own organic act, and by the act of her organization, extending the ordinance of '87 to her; in California, by her State constitution; in Utah and New Mexico, by the laws of Mexico, abolishing slavery there before their cession to the United States; in Texas, by the terms of her admission, allowing her to come in with her slave constitution, and the right to form four more slave States out of her territory. This closed up the question every where. It left not one inch square of territory in the United States open to the slavery question. There was no way to get at the question, then, but by breaking down a law; and this was what neither Mr. Clay, nor Congress would do. In his plan of compromise measures, he reviewed the question of slavery in the Territories, and showed it to be settled every where, and refused to unsettle it any where, for the purpose of settling it over again. With respect to Utah and New Mexico, the second of the resolutions submitted by him expressly declared that slavery did not exist there—that it was abolished by the laws and constitution of Mexico, and would remain abolished until those laws were repealed by Congress—and that it was unnecessary and inexpedient "to adopt any restriction or condition on the subject of slavery." This was the non-intervention of 1850. It was the non-intervention which respects existing law! which would not abolish law, to get at the slave institution in these Territories, either to restrict, or allow it; or to set the people themselves to quarrelling and fighting about it. It was the non-intervention of submission to law; and to quote it as a precedent and authority for abrogating the Missouri Compromise, was to unsettle what had been settled for thirty-four years by that compromise. And the clear lesson taught by the measures of 1850 was, that Congress would not repeal a law to re-open the hideous slavery question. That is the lesson taught! non-interference with existing laws! and upon this lesson the Congress of 1854 has felt itself called upon to do just the contrary of what that teaches—to break down one of the most sacred and extensive of these benign

laws, and to revive the slavery agitation which had been so well and so long settled before. This is what the Congress of '54 did! just the reverse of what the conduct of the Congress of 1850 taught—breaking up the "finality" then established—setting the people to fighting in the Territories—and bringing the question back into Congress under the pretence of keeping it out of Congress, when it was already out, and no way to get it in again except by breaking down a law. Such is the invention, as barefaced as wicked, to which the repealers have had recourse to justify their destruction of the Missouri Compromise—a crime in itself, and doubled by laying it on an innocent party; but they found it no easy matter to come up to this invention. Long it was before they conceived it, and various the forms under which it appeared before it took the shape on which all rallied and stood; but of this hereafter.

II. We come now to the second head of this Review, namely, the manner, (*modus operandi*,) in which the repeal of the Missouri Compromise was effected, the suddenness of the turn against that measure, and the unanimity with which all took the track after its repeal was determined upon, and the excuse provided for it. To do this it will be necessary to go back a year—to the end of the previous session of Congress—and see how the question of repeal stood then; see how the party stood affected towards the compromise at that time. This will be done by giving the words of one who is authority upon this point—Mr. Atchison, of Missouri—and who, in coming into the support of the then impending Nebraska Bill upon the basis of the compromise, thus expressed himself:—

"I will now state to the Senate the views which induced me to oppose this proposition in the early part of the session. I had two objections to it. One was that the Indian title to that Territory had not been extinguished, or at least a very small portion of it had been. Another was the Missouri Compromise, or, as it is commonly called, the slavery restriction. It was my opinion at that time—and I am now very clear on that subject—that the law of Congress when the State of Missouri was admitted into the Union, excluding slavery from the Territory of Louisiana north of 36°, 30′, would be enforced in that Territory unless it was specially rescinded; and whether that law was in accordance with the Constitution of the United States or not, it would do its work; and that work would be to preclude slaveholders from going into that Terri-

tory. *But when I came to look into that question, I found there was no prospect—no hope—of a repeal of the Missouri Compromise excluding slavery from that Territory.* Now, sir, I am free to admit that at this moment, at this hour, and for all time to come, I should oppose the organization or the settlement of that Territory, unless my constituents, and the constituents of the whole South, of the slave States of the Union, could go into it upon the same footing, with equal rights and equal privileges, and carrying that species of property with them as other people of this Union. Yes, sir, I acknowledge that that would have governed me; *but I have no hope that the restriction will ever be repealed.* I have always been of opinion that the first great error committed in the political history of this country, was the ordinance of 1787, rendering the North-western Territory free territory. The next great error was the Missouri Compromise. *But they are both irremediable. There is no remedy for them. We must submit to them. I am prepared to do so. It is evident that the Missouri Compromise cannot be repealed.* So far as that question is concerned, we might as well agree to the admission of this Territory now as next year, or five, or ten years hence."

So spoke Mr. Atchison; and from these multiplied declarations of no hope for the repeal of the Missouri Compromise, and from the declaration that, unless specially repealed, it would exclude slaves from the Territory, we are allowed to draw two conclusions. *First:* That no idea of ever repealing the Missouri Compromise then existed. *Secondly:* That no idea that the compromise measures of 1850 had repealed, or impaired that line, then existed. These are two important points necessary to be known, in order to understand the subsequent movement.

It was on a motion to take up the Nebraska Bill, and put it on its passage, that Mr. Atchison made these remarks. Mr. Douglass, the reporter of the bill, was present, and urgent to take it up, and pass it, saying: "That it was a bill very dear to his heart—that for eight long years he had been trying to get it through—and that, in his anxiety to pass it, he would yield his privilege of speaking, that he might get an immediate vote." But others would speak: it was the last night of the session, when discussion was fatal to any bill. It was not taken up. If it had been, it would certainly have passed; and if it had, the American people would never have heard of the repeal of the Missouri Compromise, either as a direct act in 1854, or as

the effect of the compromise measures of 1850—albeit two-thirds of the Senate, and nearly all of those engaged in the subsequent repeal were present! not one recollecting that the compromise had been dead for three years! and deprived of life by themselves!

This was the end of Mr. Fillmore's administration. His successor, Mr. Pierce, found the country in the most happy and tranquil state; peace and prosperity at home and abroad, and slavery agitation stone dead. Felicitating himself upon this delightful state of the country, he made it a topic of national congratulation in his first annual message, and thus dilated upon the happy auspices which saluted his nascent administration:—

"We are thus not only at peace with all foreign countries, but in regard to political affairs, are exempt from any cause of serious disquietude in our domestic relations. The controversies which have agitated the country heretofore, are passing away with the causes that produced them, and the passions they had awakened; or, if any trace of them remains, it may be reasonably hoped that it will only be perceived in the zealous rivalry of all good citizens to testify their respect for the rights of the States, their devotion to the Union, and their common determination that each one of the States, its institutions, its welfare, and its domestic peace, shall be held alike secure under the sacred ægis of the Constitution."

Such was the picture of the national felicity, at home and abroad, which Mr. Pierce drew in his first annual message. Slavery agitation extinct; its causes and its passions all gone; no trace of it remaining; and the only contention among the people a zealous rivalry in showing devotion to the Union, respect for the rights of the States, and regard for their domestic institutions. It was a charming picture, and faithfully drawn, and universally greeted with joy; for never, since the first term of Washington's administration, had there been such a political millennium in our country as then reigned. The message did right to exult-over it:—but, oh! how sadly this lovely picture, drawn, no doubt, by the President's own hand, contrasts with the hideous one prepared for him by others in his last annual message, and which it required eleven pages to describe.

At this session of Congress, the first under Mr. Pierce's administration, Mr. Douglass renewed his Nebraska Bill, being for the ninth time, and still on the basis of respect and perpetu-

ity to the Missouri Compromise Act—a proof that, up to that time, he had no idea of its repeal by the compromise measures of 1850, or any suspicion that it had been in any way affected by those measures, then three years old, and certainly long enough in force for their effect to be known. The bill was referred to a Committee, which returned it with what appears to have been a unanimous report, reciting that there was a controversy about the validity of the Missouri Compromise Act; some eminent statesmen holding it to be null and void under the Constitution, and others holding the act to be valid; and concluding with declaring that the Committee did not feel itself called upon to engage in the discussion of these disputed points, and that it was not prepared to recommend either the repeal or the affirmation of the Missouri Compromise Act; or to declare the meaning of the Constitution with respect to the disputed point, *to wit:* the power of Congress to prohibit slavery in a Territory. The following is the language of the report on these points:—

"In the opinion of some eminent statesmen, who hold that Congress is invested with no rightful authority to legislate upon the subject of slavery in the Territories, the 8th section of the act preparatory to the admission of Missouri into the Union is null and void; while the prevailing sentiment in large portions of the Union sustains the doctrine that the Constitution of the United States secures to every citizen an inalienable right to move into any of its Territories with his property, of whatsoever kind and description, and to hold and enjoy the same under the sanction of law. Your committee do not feel themselves called upon to enter into the discussion of these controverted questions. They involve the same issues which produced the agitation, the sectional strife, and the fearful struggle of 1850. As Congress deemed it wise and prudent to refrain from deciding the matters in controversy then, either by affirming or repealing the Mexican laws, or by an act declaratory of the true intent of the Constitution, and the extent of the protection afforded by it to slave-property, so your committee are not prepared to recommend a departure from the course pursued on that memorable occasion, either by affirming or repealing the 8th section of the Missouri act, or by any act declaratory of the meaning of the Constitution in respect to the legal points in dispute."

This report was made January 4th, 1854; and up to that day it is seen that the eminent committee which made it saw

no repeal of the Missouri Compromise Act in the measures of 1850—saw no occasion to recommend its repeal—no occasion to declare the meaning of the Constitution with respect to slavery in Territories. They abstain from doing any of these things, and for a solid and patriotic reason, which they state; and which addresses itself to the best feelings of all the friends of the Union. It was, because the discussion of these points "involved the same grave issues which produced the agitation, the sectional strife, and the fearful struggle of 1850." Solid, and patriotic reasons for not engaging in such business, and good for all time. The struggle of 1850 was indeed fearful, and portended the immediate dissolution of the Union. One of those conventions which commenced in 1830, and which have become an institution of the South, and which Mr. Madison qualified as "insidious," had then assembled at Nashville, Tennessee—taken the question of union, or disunion, into its hands—and were openly passing measures for the separation and segregation of the Southern States. The compromise measures of 1850, being received as a "finality" by the country, checked this parricidal work; and the committee, of whose report we speak, acted wisely and patriotically in not touching those questions which "produced the agitation, the sectional strife, and the fearful struggle of 1850;" and in not disturbing those compromise measures of that year which allayed that agitation, composed that strife, and terminated that fearful struggle. The committee which made the report was strongly Southern in its composition—one half from the slave States—the other half (except one) as strongly Southern as the South itself on all the slavery issues; and unanimous in the report. They were: Messrs. Douglass, of Illinois, chairman; Houston, of Texas; Johnson, of Arkansas; Bell, of Tennessee; Jones, of Iowa; and Everett of Massachusetts. The report was so acceptable to the Senate that, as soon as it was read, the large number of 5,000 extra copies were ordered to be printed for the use of the body—that is to say, for the Senators to distribute among the citizens of the States, for their information of the manner in which the Senate was keeping out of its chamber the portentous issues which had so lately convulsed the country.

This report was received as cordially outside of the Senate as in it. All the friends of the Administration applauded it.

The *Daily Union*,—the administration paper, its organ,—and in which several members of the cabinet habitually wrote, was most encomiastic in its favor; and not merely in favor of the report, but of the Senator who drew it, applauding him for the "sound, national, and Union-loving sentiments with which it abounds." The report itself was immediately published in full in the official paper, and earnestly commended to the careful perusal of every democrat, with the declaration that the President and cabinet all approved it. And this laudation became more and more intense from day to day, until it took the form of fierce censures "against the whigs and abolitionists," who were against it, because they wanted to embarrass the administration—and a rebuking caution to such Southern democrats as showed a disposition to bring "an angry element of discord into the halls of legislation." The occasion for these censures and admonitions was this: Mr. Dixon, a whig Senator from Kentucky, gave notice on the 16th of January, that when the bill came up for consideration he should move to add a section to it, repealing the Missouri Compromise Act of 1820; and Mr. Sumner, a free-soil Senator from Massachusetts, gave notice on the other hand, that he would at the same time move an amendment affirming that compromise. Both these propositions were immediately denounced by the Daily Organ in terms, not only of condemnation, but of opprobrium—thus: "Two propositions have been made in the Senate—one by Senator Dixon, a whig, and the other by Senator Sumner, an abolitionist—which indicate that the bill, as proposed by Mr. Douglass, is to be vigorously assailed. Mr. Dixon proposes to amend it, by a clause expressly repealing the act of 1820, commonly known as the Missouri Compromise. Mr. Sumner proposes to amend it, by expressly declaring that the Missouri Compromise is to be continued in force." Thus, these two propositions were immediately denounced, and the democratic party warned against them. They were met as hostile. They indicated assault (and vigorous assault) upon the bill of Mr. Douglass; and to aggravate the nature of this assault, as if not bad enough in itself, it was carefully noted that these propositions came from a whig and an abolitionist. The Daily Union, by way of commending Mr. Douglass's bill and report, went on to declare Mr. Cass's perfect satisfaction with it, and to deprecate the reopening of the

slavery question, as proposed by the whig and abolition Senators. It gave its opinion of the effect of their propositions, saying: "Mr. Dixon's amendment would stir up excitement on one side, whilst Mr. Sumner's will effect the like object on the other: and as whigism and abolitionism have every thing to gain, and nothing to lose, the upshot may be that the agitation may enure to the benefit of the common opposition of the democratic party." These remarks of the Organ are as significant as explicit. The proposed amendments are to stir up excitement, and to produce agitation; and this excitement and agitation, it is apprehensively expressed, may enure to the benefit of the enemies of democracy. The Organ then proceeds to counsel adherence to the bill and report of Mr. Douglass—to let well enough alone—and, in that phrase, to let the Missouri Compromise alone. In this sense, it thus discoursed: "In a word, it would be wise in all democrats to consider whether it would not be safest to let well enough alone." And then goes on to say—"The repeal of the Missouri Compromise might, and, according to our view, would, clear the principle of Congressional non-intervention of all embarrassment; but we doubt whether the good thus promised is so important, that it would be wise to seek it through the agitation which necessarily stands in our path." And upon this view of the consequences of disturbing the compromise—inevitable agitation—and upon this doubt of profit or loss to the democratic party in rousing that agitation, the Daily Union deems it "safest," and "wisest," to let well enough alone—that is to say, let the Missouri Compromise stand untouched, as proposed in Mr. Douglass's bill and report. And to this effect were several articles, and sometimes as high as seven in one paper, all denouncing the whig and abolition propositions of Mr. Dixon and Mr. Sumner, and reenforcing its denunciations by constantly assuming to speak the sentiments of the President, his cabinet, and the democratic party.

But it would seem that Mr. Dixon's proposition inflamed the hopes of some Southern members who wished for the direct repeal of the compromise, and who began to object to Mr. Douglass's bill and report, for not going far enough; and these the Daily Organ undertook to restrain and pacify, by addressing to them a sort of curtain lecture—a mixture of expostulation, per-

suasion, and menace. In this vein it thus discoursed in its issue of the 17th of January: "If any portion of the South demands more than is granted in this plan of settlement, the demand is preposterous. We sincerely trust the democratic party in Congress, representing all sections of the Confederacy, will, without permitting an angry element of discord to enter the halls of legislation, unite in adopting a measure which commands the approval of a vast preponderance of the American people." This appeal to the "South"—or rather, to a portion of the South—is every word of it significant. In the first place, to give weight to its exhortation, the Organ declares its own sincerity in trusting that no one of the democratic party, from any section of the Union, will indulge in a demand which it stigmatizes as "preposterous." It deprecates the entrance into the halls of legislation of the angry element of discord which the attempted repeal of the Missouri Compromise would involve, and calls for all to "unite" in the adoption of Mr. Douglass's bill and report. And to give weight to this exhortation to unity in the whole democratic party, the Organ emerges from the mere precincts of the party, and takes post upon the whole American people! declaring the measures to have a vast preponderance of this whole people! And here the date is as important as the words, showing how the question stood up to the eve of the crisis; it was the 17th of January—that is to say, twelve days after Mr. Douglass's report had been made, and six days before the unforeseen catastrophe that history will have to record. In the same vein, the Daily Organ again wrote three days afterwards, *to wit*, on the 20th, under the head, in capitals, "MISSOURI COMPROMISE," when it said: "We trust that we shall not be considered officious in noting the fact, that the proposition in the Senate for the amendment of Mr. Douglass's bill has proceeded from members of the two parties who are irreconcilably opposed to democratic ascendency." And again, on the 22d, "The settlement of the question involved in the Nebraska Bill, calls for the exercise of that spirit of conciliation and forbearance by which alone sectional issues can be amicably and satisfactorily adjusted."

Thus, up to the morning of the 22d day of January, the President and the cabinet, (according to the Daily Union,) the democratic party, and a vast majority of the whole American

people, were opposed to disturbing the Missouri Compromise—and none but abolitionists and whigs were for that disturbance—and thus to excite agitation, and to bring an angry element of discord into the halls of legislation. But these quotations are but a sample of the articles to this effect diurnally appearing in the administration paper for seventeen days, and by all of which Mr. Douglass's plan was made an administration measure, supported by all true democrats, and only opposed by whigs and abolitionists.

But the ides of March were approaching—close at hand—and the event to take place of which there were no portents in the political horizon.

Mr. Douglass had got the Nebraska Bill (for up to this time that is the only name it bore) recommitted to the Committee which had reported it, and had got Monday, the 23d day of January, fixed as the day for its consideration; but when the day came, that bill, instead of being taken up for consideration, as agreed upon, was dropped from the calendar of the Senate; and two bills in one, called a substitute, for two Territories, rose up in its place. It was an apparition which required explanation—and received it. Mr. Douglass rose to ask leave to make a report from the Committee on Territories; and leave being given, he reported a substitute for the bill which he had reported on the 5th of the month, and after stating the reasons for making two Territories instead of one, went on to speak of what he termed "the more delicate questions" it involved, in this wise: "We have also incorporated in it one or two other amendments, which make the provisions of the bill upon other and more delicate questions, more clear and specific, so as to avoid all conflict of opinion." Without stating what these "delicate" amendments were, he moved that the substitute be printed—which motion prevailing, necessarily postponed the consideration of the substitute bills until the printing could be accomplished. Mr. Douglass had said that the substitute had come from the Committee: to make sure on that point, Mr. Mason, of Virginia, addressed a question to Mr. Douglass, thus: "I did not hear the honorable Senator from Illinois distinctly, and I wish to know whether the amendment he now proposes as a substitute is reported from the Committee?" To which Mr. Douglass answered in two words, of two letters each, "It is;"

and the answer may be said to include the whole of the Committee, except Mr. Everett, of Massachusetts, as he alone, in the course of the proceedings, showed himself to be in opposition to it. And at this point the proceedings for the day stopped—no one inquiring what these delicate amendments, which had been so gingerly * alluded to, might be.

The 24th came, and Mr. Douglass asked for the consideration of his substitute bill—a bill to organize the Territories of Nebraska and Kansas; and by that title the bill was subsequently known. Several Senators objected to taking up the bill so suddenly, and asked for a week's delay—among them Mr. Cass. Mr. Dixon also was in favor of the delay, giving the manly reason that there ought to be time for all to understand the measure proposed. In this sense Mr. Dixon spoke, concluding with giving his idea of what the "delicate" amendment was, thus:—

"The amendment, which I notified the Senate I should offer at a proper time, has been incorporated by the Senator from Illinois into the bill which he has reported to the Senate. The bill, as now amended, meets my views, and I have no objection to it. I shall, at the proper time, as far as I am able to do so, aid and assist the Senator from Illinois, and others who are anxious to carry through this proposition, with the feeble abilities I may be able to bring to bear upon it."

With this declaration, Mr. Dixon formally withdrew his proposition for the repeal of the Missouri Compromise Act, and Mr. Douglass formally accepted his exposition of its meaning; and the consideration of the bill was then postponed for a week. Mr. Dixon advocated this postponement, saying:—

"I think it due to the Senate that they should have an opportunity of understanding precisely the bearings and the effect of the amendment which has been recently incorporated into the bill—I mean that portion of the amendment which alludes to slavery in the Territories proposed to be organized—Nebraska and Kansas. So far as I am individually concerned, I am perfectly satisfied with the amendment reported by the Senator from Illinois, and which has been incorporated into the bill. If I understand it, it reaches a point I am most anxious to attain—that is to say, it virtually repeals the act of 1820, commonly

* Used in the primitive sense of the word; *nicely, cautiously.*

called the Missouri Compromise Act, which declares that slavery shall not exist north of 36 degrees 30 minutes, north latitude."

This "delicate" amendment was very daintily and circuitously expressed, coming in the way of exception to the extension of the Constitution and laws of the United States to the two Territories, and because superseded by the Compromise measures of 1850, and become inoperative. Thus:—

"The Constitution, and all laws of the United States, not locally inapplicable, shall have the same force and effect in the said Territory, as elsewhere in the United States, *except* the eighth section of the act preparatory to the admission of Missouri into the Union, approved March 6th, 1820, which was superseded by the principles of the legislation of 1850, commonly called the Compromise measures, and is declared inoperative."

This mode of repeal was satisfactory to Mr. Dixon, but it was not so to those who drew it, or some of those who would have to support it. It was too glaringly absurd and false for them to go to trial upon it. The Missouri Act "superseded by the principles of the legislation of 1850." The assertion was as untrue in fact as in logic, and would so appear at the first touch of examination. Holding the affirmative of the assertion, its authors would be called upon for the proof, and required to show the principle which "superseded" an old Act of Congress of thirty-four years' standing. That could not be done; on the contrary, it would appear, from all the legislation of Congress of that year, that the Missouri Compromise Act remained untouched—neither extended nor contracted in length, nor enlarged or diminished in its application, nor interfered with by any enactment. It became necessary, therefore, to drop this "superseding," and change it into "inconsistent;" and also to introduce the principle of "non-intervention," and to add the word "void" to "inoperative;" and then to add a little stump speech to explain what all this meant. Thus altered, the repealing enactment, as eventually settled down upon, ran in these words:—

"The Constitution, and all laws of the United States which are not locally inapplicable, shall have the same force and effect within the said Territory of Nebraska as elsewhere in the United States, *except* the eighth section of the act preparatory to the admission of Missouri in-

the Union, approved March 6th, 1820, which, being inconsistent with the principle of non-intervention by Congress with slavery in the States and Territories, as recognized by the legislation of 1850, commonly called the Compromise measures, is hereby declared inoperative and void; it being the true intent and meaning of this act not to legislate slavery into any Territory or State, nor to exclude it therefrom, but to leave the people thereof perfectly free to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States."

And thus, three years after the event, and by a sort of political coroner's inquest, the Missouri Compromise Act was found to be dead, and killed by those who (in much part) composed the jury; and who, for so long a time, had remained ignorant of what they had done.

This was the final form which the repealing clause took; and the variations it underwent, with its circumlocutions and ambiguities, show the infinite trouble its authors had in cooking up something which would make the repeal without saying so, and throw upon others the odium of an abrogation which they had the will but not the face to make. Though not so glaringly absurd and false as the first edition of the "delicate" amendment, it was more crooked and circuitous—equally unfounded in fact and inference—equally false and unjust in making the Congress of 1850 the scape-goat of its own sin—and dishonorable to the name of legislation, by the little stump speech which is stuck into its belly. Fairly interpreted, and this novel method of enactment signifies that they found the Missouri Compromise repealed three years before, and therefore they would repeal it over again—about as bad a plea in legislation as in the administration of justice. For, a plea from a man arraigned for a homicide, that he found the man dead and killed him over again, would not be admitted as a good plea in any court, either of law or conscience. And yet of that nature is the plea for repealing the Missouri Compromise.

This amended amendment, in a substitute bill, brings forward the principle of "non-intervention" on the subject of slavery in Territories, and finds it established in the legislation of 1850!—which legislation established directly the contrary. That legislation, in plain language, refused to pass any provision on the subject of slavery in the Territories acquired from Mex-

ico, either admitting or prohibiting it, *because slavery was already abolished there by the laws of Mexico.* It would not prohibit slavery there, because it was already prohibited. It would not repeal that law to admit slavery, because it would not plant slavery where it did not exist. It would not repeal the law and say nothing, because that would be to unsettle the question where it was already settled, and settled to the satisfaction of a great majority of Congress, and of the people of the United States. This was the "non-intervention" of the legislation of 1850! Not intervene to break down a law to open the slavery question where it was settled, and set people to quarrelling and fighting about it. That was the non-intervention (if the absurd term must be used where there was nothing to get between), and on this point one shall speak whose voice will be potential, and from the grave rebuke those who libel his memory in quoting him falsely, to justify the destruction of a measure which it was one of the glories of his life to have promoted.

I speak of Mr. Clay, and of his report and speeches on his compromise measures of 1850, and in which he has spoken for himself with a clearness and precision which admits of no misunderstanding.

His report, embracing all his compromise measures, concluded with digesting their substance into seven resolutions, presented for the adoption of the Senate, the second one of which applied to the point now under examination, and was in these words:—

"*Resolved*, That as slavery does not exist by law, and is not likely to be introduced into any of the territory acquired by the United States from the Republic of Mexico, it is inexpedient for Congress to provide by law, either for its introduction into, or exclusion from, any part of the said territory; and that appropriate territorial governments ought to be established by Congress in all of the said territory, not assigned as the boundaries of the proposed State of California, without the adoption of any restriction or condition on the subject of slavery."

This was the principle of Mr. Clay's non-intervention, as it is called. It was non-interference! Non-interference to unsettle slavery where it was settled! It was non-interference with the

law which settled it! and there was no clap-trap blarney about leaving the inhabitants of the Territories to regulate their domestic institutions as they pleased. There was no explanatory stump speech in it to declare its true intent and meaning. That true intent and meaning was placed at the head of the resolution, and showed that Congress would not interfere with slavery in these Territories, because, by law, it was already prohibited there. This is what the resolve says, and the same sentiment was reiterated in the speech which recommended its adoption to the Senate. Every where in his speeches and reports his non-interference was put upon that ground; and many Senators, in voting against the Wilmot proviso, gave the express reason for their vote, that there was no necessity for it, for the Mexican laws had put an end to slavery there, and that further legislation to that effect was supererogation. And thus the interference of 1850 was a refusal to break down a law to open the question of slavery; and that is quoted in 1854 as authority for doing precisely the contrary. The little stump speech which was put into the act about not legislating slavery in or out of the Territory, and leaving the people free to regulate their domestic institutions, could only deceive those who forgot the first word of the amendment—the extension of the Constitution to the Territory!—carrying along with it (according to the doctrine of those who put it there) African slavery in the most inexorable form!—beyond the power of Congress, or of the people in the Territory to keep it out! And this was the crooked, ambiguous, falsely pretexted, and contradictory mode of repealing the Missouri Compromise, which the substitute bill of Mr. Douglass so "delicately" provided.

The report and speech of Mr. Clay—his resolve submitted to the Senate for its vote—is a sufficient vindication of himself, his measures, and the legislation of 1850, from the imputation cast on them; but there is another authority, equally potent in this case, to make the same vindication: it is the report of Mr. Douglass made at the first introduction of his bill, as heretofore quoted. That report, after reciting that there was a dispute about the Mexican laws, as there was about the Missouri Compromise, went on to applaud the wisdom and prudence of the Congress of 1850 in refraining from deciding that dispute, "*either by affirming or repealing the Mexican laws;*" which is

the exact truth. The Congress of 1850 would not interfere with that Mexican law. And that non-interference, after being first quoted in the report to justify non-interference with the Missouri Compromise, is afterwards quoted in the amended amendment of the substitute bill, as a precedent and authority for repealing the Missouri act. The first quotation was right; the second, flagrantly false.

The Dixon whig amendment was now incorporated in the democratic substitute bill, but without any of the manliness which belonged to it when offered by the whig Senator. His amendment was direct and to the point, without any of the circumlocutions, excuses, justifications, bolsterings, explanations, recommendations, and reference to others, which imply a consciousness of wrong which requires defence before it is attacked. It went direct to the repeal of the Missouri Compromise, and to the admisson of slavery into all the Territories of the United States, while the substitute went to the same effect, but circuitously, crookedly, apologetically, and argumentatively; and improving in its reasons as it advanced, the second substitute being a large emendation of the first, and both in flat contradiction of the original bill and report, upon which all democrats had been required to stand and to fight, under the penalty of political excommunication, and future classification with whigs and abolitionists. For the sake of convenient comparison, I here reproduce, and in juxtaposition, the four shifting phases of this legislative luminary:—

First Phase.—"In the opinion of some eminent statesmen, who hold that Congress is invested with no rightful authority to legislate upon the subject of slavery in the Territories, the eighth section of the act preparatory to the admission of Missouri into the Union, is null and void; while the prevailing sentiment in large portions of the Union sustains the doctrine, that the Constitution of the United States secures to every citizen an inalienable right to move into any of its Territories with his property, of whatsoever kind and description, and to hold and enjoy the same under the sanction of law. Your Committee do not feel themselves called upon to enter into the discussion of these controverted questions. They involve the same issues which produced the agitation, the sectional strife, and the fearful struggle of 1850. As Congress deemed it wise and prudent to refrain from deciding the matters in controversy then, either by affirming or repealing the Mexican laws, or by

an act declaratory of the true intent of the Constitution, and the extent of the protection afforded by it to slave property, so your Committee are not prepared to recommend a departure from the course pursued on that memorable occasion, either by affirming or repealing the eighth section of the Missouri act, or by any act declaratory of the meaning of the Constitution in respect to the legal points in dispute."

[*Mr. Douglass's Report.*

SECOND PHASE.—"That so much of the eighth section of an act approved March 6th, 1820, entitled 'An act to authorize the people of the Missouri Territory to form a constitution and State government, and for the admission of such State into the Union on an equal footing with the original States, and to prohibit slavery in certain Territories,' as declares 'That, in all that territory ceded by France to the United States, under the name of Louisiana, which lies north of 36° 30′ north latitude, slavery and involuntary servitude, otherwise than in the punishment of crimes whereof the parties shall have been duly convicted, shall be for ever prohibited,' shall not be so construed as to apply to the Territory contemplated by this act, or to any other territory of the United States; but that the citizens of the several States or Territories shall be at liberty to take and hold their slaves within any of the Territories of the United States, or of the States to be formed therefrom, as if the said act, entitled as aforesaid, had never been passed."

[*Mr. Dixon's Amendment.*

THIRD PHASE.—"That the Constitution, and all laws of the United States which are not locally inapplicable, shall have the same force and effect within the said Territory as elsewhere in the United States, *except* the eighth section of the act preparatory to the admission of Missouri into the Union, approved March 6th, 1820, which was superseded by the principles of the legislation of 1850, commonly called the Compromise Measures, and is declared inoperative."

[*First Substitute.*

FOURTH PHASE.—"The Constitution, and all laws of the United States which are not locally inapplicable, shall have the same force and effect within the said Territory as elsewhere in the United States, *except* the eighth section of the act preparatory to the admission of Missouri into the Union, approved March 6th, 1820, which, being inconsistent with the principle of non-intervention by Congress with slavery in the *States* and Territories, as recognized by the legislation of 1850, commonly called the Compromise Measures, is hereby declared inoperative and void; it being the true intent and meaning of this act, not to legis-

late slavery into any Territory or *State*, nor to exclude it therefrom, but to leave the people thereof perfectly free to form and regulate their domestic institutions in their own way, subject only to the Constitution of the United States." [*Second Substitute.*

In this fourth phase, it is to be noted by the reflecting reader, that "*States*" are introduced, and placed on a level with Territories in the article of negro slavery! and making it a merit in the bill, that it did not legislate slavery into any State, or out of any State; but left it free to States, as well as Territories, to have slaves, or not, as they pleased! as if Congress, or any one out of Bedlam, had ever proposed such impertinent nonsense. Surely the "*States*" must feel grateful for such forbearance extended to them, and such indulgence allowed them, and such high consideration manifested for them in such slashing times. But, in the name of wonder, and in virtue of the inquiring mood of the "sober second thought," how comes it that "States" were lugged in here, in such company, and in such a bill? Why were they lugged in? for it was not accident. Twice they are brought in, which shows it was not chance-medley, but design; and each time with the same gracious accord of the same privileges, and the same equalization and yoking with the Territories by the connective conjunction "or," which, at once, levels them as equals, and yokes them as fellows. This shows design, and precludes the possible conception of accident. Design, then, being established, the inquiry recurs: What was it? And the answer is, It was to promote the general scheme of the bill! which was to mystify, obfuscate, bamboozle, and befog the "*squatter sovereigns*," by making them believe that they were equal to States, and might have black slaves or not, as they pleased, while, in reality, they themselves were to be made into white slaves, under that head-clause in the bill which spreads the Constitution of the United States over them, carrying "*niggerdom*" along with it! and fastening it on their sovereign backs, beyond their power to kick it off, or the power of Congress to lift it off, or of any law to keep it off. That is the design of this desecration—this dragging in of the States—all to promote the general scheme of the bill! which is all fraud, cheat, trick, swindle, quackery, charlatanry, demagoguery, bladdery, and legislative black-leggery. That is its design! and if its fathers think otherwise—for there were many fathers and no mother for it—let

them out with their tools (wind and instrumental), and give us a touch of their music. In the mean time I dismiss, for the present, the infamous enactment, passing it through the portals of the pillory—ears cut off, back scourged, cheeks smoking under the fiery touch of the hot, red, hissing brand.

The bill was postponed for a week, and such a week of political gyrations was never beheld. If Dryden had not written so long before, it might have been supposed he was describing it:

"Quick, and more quick, in giddy gyres they turn."

First, the Daily Union, laureate organ to the administration, and apparent manager of the democratic party, now headed by nullifiers, and gorged with renegades. This paper had gone to sleep on the night of the 22d of January in the reiteration of all its imprecations on the Dixon amendment, and all its exhortations to the democracy of the Union to stand clear of it, and a special warning to the Southern democracy not to expect any thing so preposterous: it waked up on the morning of the 23d, rejoicing in the adoption of that amendment in the substitute bill, declaring it to be an administration measure, making adhesion to it a test of political orthodoxy, and the sole rule of promotion, or even of retention in the democratic ranks. Party outlawry was immediately pronounced against every halting brother that did not come to the "right about," and applaud the measure which he had damned the day before. Next the administration. The organ proclaimed it to be a unit in favor of the metamorphosed amendment, and in its name promised rewards and punishments. The democrat who refused to turn was to be excommunicated: those who turned were to be the only true men: all who lost the favor of their constituents by turning, were to be indemnified with public office. And with these declarations corresponded the conduct of the President, the members of the cabinet, and their immediate friends on the floor of Congress. The former sent for members, and plied them with exhortations, entreaties, and promises: the latter openly denounced hesitation as a crime to be punished—lauded adhesion as a merit to be rewarded—reproached the refractory with abolitionism—and made the support of the new-fangled amendment not only an administration measure, but a measure of life and death to the administration, in the struggle for which no

neutrals were to be allowed. Then came the body of the party, and it was variously affected. The venal embraced the change with alacrity, the instant they knew the administration had adopted it, and ferociously assailed all who did not change with them. The timid gave in slowly and sorrowfully, declaring that they could not resist an administration measure, and lose their place in the party. The distress of many of them was pitiable to behold. Their fear of party outlawry, not their will, consented—showing timidity in a public man to be equivalent, in its effects, to downright treachery. Several of these unwilling converts became champions afterwards of the detested measure, and thereby ceased to be pitiable, and became contemptible. A few old democrats, solitary monuments, stood firm upon the faith that was in them; and these few were immediately denounced as whig abolitionists, and visited with all the punishment the administration could inflict upon such men —the exclusion of their friends from office, and the appointment of the most vulgar and venomous of their enemies. Nullifiers exulted, and became the leaders of the democracy, and the drivers of the administration. They got possession of all power, and worked it to the steady purpose of carrying the bill. Patronage and the press—rewards and punishments—the double battery of seduction and intimidation—were all in their hands; and they wielded all without halt, and without remorse. And to their honor it must be said—personal honor in the midst of political corruption—they faithfully complied with all the promises they had made. The killed and wounded were provided for! office to all who lost the favōr of their constituents! favor to all that turned! open arms to all deserters from all ranks! nullifiers and disunionists preferred! and this continued to be the rule of action during the whole Pierce administration. Such conduct required much defence, and received a large instalment of it in those eleven pages of the last annual message, which it is the object of this brief notice to point out to history for her severe condemnation.

This is the record history of that abrogation of the Missouri Compromise into which the administration of Mr. Pierce was forced; and the record history I only propose to give. But there is well authenticated history belonging to the transaction which does not appear on the record; as that, the sudden

determination to adopt the Dixon proposition was the effect of a council, which, different from the Scythians, who always resolved twice before they acted—first drunk to give them courage, then sober to give them discretion—resolved but once; and that in the former predicament. And, also, that there was hard work to force some into the support of the measure who afterwards became its champions—the more zealous, in order to invest forced conversion with the semblance of honest conviction.

But, that no ingredient of infamy should be wanting in such a transaction, the element of fraud was added to all the other means of success. The case was this: The Daily Organ, after having diurnally, for many days, laid down the law of political death to any democrat who flinched at the adoption of the Dixon-whig proposition, now became administration democratic, and was authorized to publish a dispensation as to "details." A special article was published, to let it be known that there was to be freedom of action on the "details" of the bill—that every democrat was not to be required to vote for every "detail:" many worthy members remonstrated against that, as requiring too much. Some members, friendly to the repeal of the Missouri Compromise, could not subscribe to the reasons given for it, nor to the future grand movement of which it was to be the basis.* Here then was an opening for the loss of the bill—its

* As Mr. Seward, of Georgia. This gentleman, a friend to the object of the bill, as repealing the Missouri Compromise, and determined to vote for it, yet objected to the reasons for their untruth and unfairness, saying: "I oppose the details of this bill, because they are not consistent with themselves, or with the transactions to which they relate; and the bill itself shows that it was manufactured for a particular purpose. Some of the clauses embraced in it, conflicting as they are, were introduced for the purpose, in my opinion, of setting up a principle to be asserted in future, and which the acts of 1850 never contained. Now, sir, let us see. We are called upon here, now to vote for this bill, which is not drafted in the ordinary shape of legislative acts. But the framers of this bill have furnished the reasons, within the bill itself, on which we must act, and which they call on us to subscribe to. What is it? They tell us that the law of 1820, being inconsistent with the legislation of 1850, therefore, that the act of 1820 is inoperative and void. I take issue with them, and for myself, occupying the position that I do as a Southern man, I never have subscribed, never will, and never can subscribe to the doctrines contained in the acts of 1850. And now, when that portion of the South having feelings in common with me on this question, have waived their objections to it for the purpose of uniting with the South, and harmonizing public feeling on this great question, it is put here as the basis of some grand movement in this country."—*Mr. Seward's (of Geo.) Speech. Extract*

With these objections to the details of the bill, and desire for its object, Mr. Seward

loss in the House of Representatives, where its fate was most dubious. It would be easy for some half dozen of the forced members, by a critical vote, to adopt, or reject some detail, on which the fate of the whole bill would depend. This danger had to be guarded against; and that required a fraudulent violation of a rule of the House—a rule specially made to secure fair legislation, and indispensable to it where the previous question has become the ordinary legislative weapon in passing, or defeating bills. The regular effect of that question, when ordered, was to cut off all debate, and all amendments, and bring the House to a direct vote upon the passage of the measure; and this question came to be so abused by a dominant majority for the time being, (often bringing the House to vote in total darkness upon the measure, or cutting off amendments necessary to honest legislation,) that all parties agreed to modify its effect, so as to give a chance to the House to understand a bill, and a chance to amend it by offering an amendment, to be voted upon without debate. A rule was accordingly adopted for that purpose, and by virtue of which amendments might be offered after the previous question had been ordered, and the member offering it allowed five minutes to explain its object. This, to be sure, was but small liberty of speech in a legislative body, boasting of the largest liberty in the world; but, small as it was, it was not allowed to be used in the abrogation of the most momentous law that Congress ever passed. The bill went into Committee of the Whole: it was the House bill: and the friends of the bill, being a majority, moved to strike out the first section. It was done! and the bill was then dead—in the slang language of the House—its head cut off. Of course, there was nothing more to be done with it in committee. The House was the next place for it to appear, and the question before the House was to concur with the committee. This re-

---

found himself in the dilemma of not being able to vote at all. The grand movement, obscurely hinted at by Mr. Seward, was immediately remarked upon by Mr. Benton, who interpreted it to be the acquisition of Cuba, and large slices from Mexico, the latter to be made into slave soil under the extension of the Constitution and the vote of Southern emigrants, a few of whom would overpower the feeble, ignorant Mexican population. (*See Appendix IV.*) On these details of the bill, Mr. Benton felt certain of smashing it up upon motions to amend; but all such motions were cut off by the fraudulent use of rules.

quired every supporter of the bill to reverse the vote he had given in committee—to vote directly contrary to what he had done; and this change was made. The same who voted to kill the bill in committee, voted to bring it to life in the House—which was done. The bill being then alive, could receive an amendment: and instantly there was a motion to amend, by striking out the whole of the House bill, and substituting the whole of the Senate bill—all which was done under the gag of the previous question. Though called an amendment, the Senate bill, thus adopted, was a complete bill in itself, and a long one of thirty-seven sections, and, *as a bill*, requiring three readings on different days; but, as an *amendment*, to be read once, which it had not been when offered; but a reading was forced afterwards under the rule which authorizes a demand for the reading of an amendment. Technically, it was an amendment: in reality a bill; and, although the rules required but one reading, yet it was an outrage upon all fair legislation to drive it through as it was done. It was under the gag of the previous question, and no further debate, nor the least amendment permitted—not even to a friend of the measure.

Viewing the whole proceeding as a fraud, about eighty members refused in the committee to vote on the motion to strike out the enacting clause of the House bill; and when the motion was made for the committee to rise and report the bill to the House, only 103 members voted; *to wit:* 101 for the motion, and 2 against it! upwards of 100 refusing to vote! and among the number, to their honor be it said, no less than 12 who were for the bill. Only 103 voting, there was no quorum, and objection was made to rise and report. The temporary chairman, Mr. Olds, of Ohio, decided that a quorum was not necessary to authorize the committee to rise—which was true; but a quorum was necessary to authorize a report to the House, as, without a quorum, nothing could be done in the committee; and the rules provided for the case by requiring the roll to be called, to bring in the absent members. The chairman, Mr. Olds, reported the bill and the proceedings upon it to the House, without telling there was no quorum. Several members objected on the report, proclaiming that there had been no quorum to authorize it; but the Speaker (Mr. Linn Boyd) said he had no "official" notice of this want of a quorum, and could only know

"officially" what the chairman of the committee (Mr. Olds) reported to him. It was a most humiliating scene—the whole proceedings, from the motion in committee to cut off the head of the House bill, down to the substitution and passage of the Senate bill—the House being in a continued state of uproar through a most extended day and night session, all motions to adjourn being negatived, and the result received in the galleries with clapping and shouting—as in the old time of the Bank of the United States.*

---

* MONDAY, MAY 22, 1854. *In Committee of the Whole, Mr. Olds of Ohio, in the Chair. House bill (No. 236) for the Organization of Kansas and Nebraska Territories, being under consideration. Extract from the Register of Debates.*

Mr. Stephens, of Georgia: "I rise to a privileged question. I move to strike out the enacting clause of this bill. I will state to the committee, and I want the attention of the committee to my object in making that motion; it is to cut off all amendments, and to have this bill reported to the House, that we may have a vote upon it."—*Mr. Chandler, of Pennsylvania:* "I rise solemnly to protest against this extra gag which is applied to the passage of this bill, and to say, that while it is possible a majority may thus ride rough-shod."—(Loud cries of "Order" and great excitement.)—*Mr. Orr, of South Carolina:* "Does my friend, from Pennsylvania, say that this is not in strict conformity to the rules?"—(Renewed and vociferous cries of "Order.")—*Mr. Chandler:* "I am satisfied that the motion now made is one that was not contemplated by those who drew up these rules; nor was it, I hope, contemplated by those who drove us from the regular debate in the committee, and told us to take shelter under the five minutes debate rule."—*Mr. Washburn, of Maine:* "I rise to a question of order. It is this: that it is not in order to move to strike out the enacting clause of the bill, while the House is in Committee of the Whole, but that the motion can only be made in the House."—(Loud cries of "Order" and "Question.")—The Chairman overruled the point of order.—(Vociferous cries for the question.)—*Mr. Rogers, of North Carolina:* "I wish to state to the country, and to the members of the House with whom I have been acting to this time, that I desire to introduce an amendment to this bill. I feel it due to myself to state"—*Chairman, Mr. Olds:* "Is it the pleasure of the committee that the gentleman from North Carolina be heard?"—(Cries of "No! No! No!")—*Mr. Sage, of New York:* "I desire to offer an amendment to the amendment."—*The Chairman, Mr. Olds:* "The amendment is not amendable."—*Mr. Dickinson, of Massachusetts:* "I desire to offer an amendment to the bill now before the Committee."—*The Chairman:* "It is not in order while a motion to strike out the enacting clause is pending."—*Mr. Dickinson:* "I wish to have the bill read."—*Chairman:* "It is not in order to have it read while a motion to strike out the enacting clause is pending."—(Incessant cries for the question.)—Question taken: 103 for the motion to strike out, 2 in the negative.—*Mr. Dean, of New York* (in the midst of great confusion): "I hope that no member in the minority will vote upon the question. Oppose tyranny by revolution."—(Vehement cries of "Order," and calls for the Sergeant-at-arms.)—*Mr. Lewis D. Campbell, of Ohio,* (passing through the tellers): "There will be one vote against the motion at all events."—(The tellers thereafter reported 103 ayes, 22 noes.)—*The Chair* announced the motion carried.—*Mr. Richardson, of*

And thus fraud was superadded to all the other iniquities of the bill, and its passage—superadded to the seduction, intimidation, coercion, the moral duresse under which it was driven along, and the false pretexts on which it was founded, and the sudden adoption of it, as an administration democratic measure, after stigmatizing it as a whig abolition measure. And this is the measure, thus conducted and thus passed, to the laudation of

---

Illinois: "I move that the Committee rise, and report to the House the action of the Committee."—The question for the Committee to rise was then put, and only 103 voted, and two of them in the negative.—(Cries of "No quorum!" "No quorum!")—*The Chair:* "No quorum is necessary to enable the Committee to rise."—The Committee rose, and *the Chairman* reported the bill to the House, saying: "The Committee had directed him to report the bill back, with a recommendation to strike out the enacting portion of the bill."—*Mr. Dean, of New York:* "I rise to a question of order. It is this: That less than a quorum of the Committee of the Whole cannot report a bill to the House."—*The Speaker, (Mr. Boyd,) being in the Chair:* "The Chair has no official knowledge of the number of votes given in Committee."—*Mr. Hughes, of New York:* "I rise to a question of order. I submit that the report of the Chairman of the Committee of the Whole on the state of the Union, shows that the action of that Committee is tantamount to a rejection of the bill, which the Committee have no power to do."—*The Speaker:* "Will the gentleman from New York indicate the rule under which it denies the Committee that power?"—*Mr. Hughes:* "It is under rule 119, and under that rule the Speaker of the House once decided in the same manner. The Speaker refused to entertain the report of a Committee upon the ground that it was tantamount to a rejection of the bill, which was beyond the power of the committee. The note to the 119th rule gives the same construction to the rule, and upon that I raise my question of order."—*The Speaker:* "Would remark that the same note declares the very object of the rule was to supersede and obviate the offering of further amendments."—*Mr. Meacham, of Vermont:* "I rise to a question of privilege under the 34th rule, which provides that 'where debate is closed by order of the House, any member shall be allowed in Committee five minutes to explain any amendment, after which any member, who shall first obtain the floor, shall be allowed to speak five minutes in opposition to it.' Now, I submit that the rights of members under this rule have not been respected in Committee."—*The Speaker:* "That is a question for the Committee to decide for itself. It is not competent for the Chair to know officially what has taken place in Committee except through the report of its Chairman."—*Mr. Richardson, of Illinois:* "I demand the previous question upon concurring with the report of the Committee."—*Mr. Ellison, of Ohio:* "I rise to a question of order. The 26th rule provides that when the Committee of the Whole on the state of the Union finds itself without a quorum, the Chairman shall cause the roll to be called. Now, Sir, I submit, that the Committee did find itself without a quorum—that it was not competent for it to report the bill to the House without a quorum—and that the roll was not called as the rule directs."—*The Speaker:* "That is a question which the gentleman should have raised in Committee, and which it is not competent for the House to have any knowledge of, unless so reported by the chairman of the Committee."—*Mr. Campbell, of Ohio:* "I

which, and to the condemnation of all who opposed it, eleven pages of his last message was devoted by President Pierce.

But the message was not allowed to stop at one falsification of history, large as that was, but was made to go on to another, supposed to be written by the same hand; and, in fact, a supplement and continuation of the first one. It undertakes to give the state of parties in the United States, classifying them, and assuming to say which is culpable for the present distracted condition of the country; and, of course, putting all censure upon one, and all praise upon the other. It sees but two parties—abolitionists, and democrats: and lays all blame upon the former. The message is severe upon the abolitionists; * and so

---

would make an appeal to the gentleman from Illinois (Mr. Richardson), to withdraw his call for the previous question until I can make a suggestion in relation to this bill." *Mr. Richardson:* "The appeal is in vain. I decline to withdraw the call."—(The House refused to concur with the Committee in striking out the enacting clause of the bill.)—*Mr. Richardson:* "I now move to amend the bill by striking out all after the enacting clause, and inserting in lieu thereof what I send to the Clerk's table: and upon that proposition I demand the previous question."—(It was the substitute bill from the Senate which was thus sent, and upon which the previous question was demanded before it was even read, as an amendment.)—*Mr. Dean:* "I call for the reading of the substitute."—(It was read, consisting of 37 sections.)—The vote on adopting the substitute was then taken under the previous question, and instantly *Mr. Richardson* moved the third reading of the bill under the same gag: and it was passed—not one word being spoken, or any amendment allowed to it.)—The announcement of the vote was received with prolonged clapping of hands, and hisses, both in the House and the galleries, and cries of "Order!" "Order!"

* "To accomplish their objects, they dedicate themselves to the odious task of depreciating the government organization which stands in their way, and of calumniating, with indiscriminate invective, not only the citizens of particular States, with whose laws they find fault, but all others of their fellow-citizens throughout the country, who do not participate with them in their assaults upon the Constitution, framed and adopted by our fathers, and claiming for the privileges it has secured, and the blessings it has conferred, the steady support and grateful reverence of their children. They seek an object which they well know to be a revolutionary one. They are perfectly aware that the change in the relative condition of the white and black races in the slaveholding States, which they would promote, is beyond their lawful authority; that to them it is a foreign object; that it cannot be effected by any peaceful instrumentality of theirs; that for them, and the States of which they are citizens, the only path to its accomplishment is through burning cities, and ravaged fields, and slaughtered populations, and all there is most terrible in foreign, complicated with civil and servile war; and that the first step in the attempt is the forcible disruption of a country embracing in its broad bosom a degree of liberty, and an amount of individual and public prosperity, to which there is no parallel in history, and substituting in its place hostile governments, driven at once and inevitably into mutual devastation

far as the severity is confined to them—to persons who deny property in slaves, and labor to defeat that property—I have nothing to say, and leave them to the tender mercies of the presumed writer of that part of the message. He was long enough among them to know their designs, and it would not become me to hazard speculative opinions against his positive knowledge. But, to include all under that definition who were opposed to the abrogation of the Missouri Compromise, and all who object to the further extension of slavery into free territory, and especially into territory free under the laws of other countries and to be slaves under ours: to include all such in the class of abolitionists, is to libel ninety-five per centum of the population of the free States. I claim for this ninety-five per centum total exemption from any part in word, deed, or wish, in producing the present slavery agitation. It comes exclusively from the nullifiers and the abolitionists playing into each other's hand, and embroiling the country with their equal fanaticism for and against slavery, and their criminal designs against the Union. The message is unjust in throwing upon the abolitionists (even those properly so called) the exclusive censure of producing the present troubles. They are culpable, but not exclusively, or even equally so. There is another party more culpable than they, and whom the message qualifies as patriotic, and who originated this agitation,—who began it, and keep it up; but who, without the co-operation of the abolitionists, could never have brought it to a head. These are the Southern nullifiers and secessionists, Siamese twins to the Northern abolitionists, and the two as indispensable to each other as the two halves of a pair of shears, neither of which can cut without being joined to the other.

The brief story of this close co-operation between Southern nullifiers and Northern abolitionists, is this: In the year, 1830, some Southern politicians, having some private griefs of their

---

and fratricidal carnage, transforming the now peaceful and felicitous brotherhood into a vast permanent camp of armed men, like the rival monarchies of Europe and Asia. Well knowing that such, and such only, are the means and the consequences of their plans and purposes, they endeavor to prepare the people of the United States for civil war, by doing every thing in their power to deprive the Constitution and the laws of moral authority, and to undermine the fabric of the Union by appeals to passion and sectional prejudice, by indoctrinating its people with reciprocal hatred, and by educating them to stand face to face as enemies, rather than shoulder to shoulder as friends."—*Message*, p. 9.

own to redress, and some ambitious objects of their own to accomplish, conceived that a separation of the States, and the erection of a new Republic South, was the way to accomplish their purposes: and at that object (the segregation of the States south of the Potomac) they went to work—pretexting their operations with "the oppressions of an unconstitutional protective tariff." With this view, and upon this pretext, the first Southern (South Carolina) Convention was held, November, 1832, which passed the ordinance of nullification and secession—declaring the revenue laws null and void, fixing the first day of February, then next ensuing, for the secession, (unless Congress in the mean time should abandon protective tariff;) and levying an army to maintain her attitude. The Jackson Proclamation of December, 1832,* denouncing the penalties of high treason upon all who should commit the "overt act" under that ordinance, and the full belief that he would do what he said,

---

* "A recent proclamation of the present Governor of South Carolina has openly defied the authority of the Executive of the Union, and general orders from the headquarters of the State, announced his determination to accept the services of volunteers, and expressed his belief that, should their country need their services, they will be found at the post of honor and duty, ready to lay down their lives in her defence. Under these orders the forces referred to are directed to 'hold themselves in readiness to take the field at a moment;' and in the city of Charleston, within a collection district and a port of entry, a rendezvous has been opened for the purpose of enlisting men for the magazine and municipal guard. Thus, South Carolina presents herself in the attitude of hostile preparation, and ready even for military violence, if need be, to enforce her laws for preventing the collection of the duties within her limits. Under these circumstances, there can be no doubt that it is the determination of the authorities of South Carolina to carry into effect their ordinance and laws, (for nullification and secession,) after the first of February next. This solemn denunciation of the laws and authority of the United States, has been followed up by a series of acts, on the part of the authorities of that State, which manifest a determination to render inevitable a resort to those measures of self-defence which the paramount interest of the Federal Government requires, and upon the adoption of which, that State will proceed to execute her purpose of withdrawing from the Union. By these various proceedings, therefore, the State of South Carolina has forced the General Government, unavoidably, to decide the new and dangerous alternative, of permitting a State to obstruct the execution of the laws within its limits, or seeing it attempt to execute a threat of withdrawing from the Union. In my opinion, both purposes are to be regarded as revolutionary in their character and tendency, and subversive of the supremacy of the laws and of the integrity of the Union. In this posture of affairs, the duty of the Government seems to be plain. Duty to the rest of the Union demands that open and organized resistance to the laws, should not be executed with impunity."—*Proclamation, December*, 1832.

balked that project, and gave birth to the tariff compromise of 1833, by which protective tariff (as a pretext for secession) was laid aside, to be substituted by the slavery agitation, generated out of the alarms of the slave States for their lives and property through fear of the anti-slavery "aggressions, encroachments, and crusades" of the North against the South. The substitution was instant, and notorious. On returning home from Congress, Mr. Calhoun told his friends that the South could never be united against the North on the tariff question—that the sugar interest of Louisiana would keep her out—and that the basis of Southern union must be shifted to the slave question; and, shifted accordingly it immediately was. Incontinently all the nullification newspapers opened for secession for that new cause, filling the country with alarm for the safety of slave property, and spreading the terrors of servile insurrection—inevitable consequence of the abolition designs. The whole South immediately took fire. Before the month of June —that is to say, in less than three months after the protective tariff pretext for secession had been laid aside—the new pretext had been installed in its place, and so fully developed as to be seen by all observers. Mr. Clay saw it, and on the 28th of May, in a letter to Mr. Madison, expressed his apprehensions of this new danger, and declared his disbelief of any foundation for the alarm which was attempted. Mr. Madison immediately replied, reciprocating, both his apprehensions and his disbelief; and, in a brief paragraph, fixing all the points—date, locality, actors, pretext, and mode of operation—in this new phase of the secession movement; and branding it with as much reprobation as the amiable moderation of his temper would permit. That letter becomes a starting point in this inquiry, which history will seize upon, and find in it the key which unlocks the door that gives the inside view of all the machinations which have led to the present portentous slavery agitation. In that letter to Mr. Clay, he said:—

"It is painful to see the unceasing efforts to alarm the South, by imputations against the North of unconstitutional designs on the subject of the slaves. You are right, I have no doubt, that no such intermeddling disposition exists in the body of our Northern brethren. Their good faith is sufficiently guaranteed by the interest they have as

merchants, as ship-owners, and as manufacturers, in preserving a union with the slaveholding States. On the other hand, what madness in the South to look for greater safety in disunion. The danger from the alarms is, that the pride and resentment excited by them may be an overmatch for the dictates of prudence, and favor the project of a Southern Convention, insidiously revived, as promising by its councils, the best securities against grievances of every sort from the North."

This is the stand-point—this letter from Mr. Madison to Mr. Clay—from which to view and to understand, the whole nature, origin, and design, and operative means, of the slavery agitators which has brought our country to its present distracted condition. It puts the finger upon every part of the disease. Mr. Madison sees, and sees with pain, the efforts—the unceasing efforts—made to alarm the South with the fear of unconstitutional designs in the North upon slave property. He does not believe in the considerable extent of any such designs on the part of our Northern brethren, and in that disbelief he concurs with Mr. Clay—a concurrence which shows that Mr. Clay had expressed the same sentiment in the letter which he was answering. He believed there was danger from the alarm, though unfounded; and that this fear of danger, acting on the passions, might be an overmatch for prudence, and favor the revival of that convention, which he qualified as "*insidious.*" It was the convention which passed the secession ordinance to which he referred, and which, having failed to combine the South against the North on the tariff pretext, was now to attempt the same thing on a slavery pretext. And it was revived, and for that purpose, and has been kept alive ever since —having become a new Southern institution, sitting annually, and vindicating its title to the character of "insidious," (so far as the managers are concerned,) by masking its real object of segregating the Southern States by presenting an endless succession of barren projects for their amelioration. Every thing which Mr. Madison foresaw in 1833, we have all seen since—the unceasing attempts to alarm the slave States—its success in reviving the "insidious" conventions—its effect on the pride, and resentment of the Southern people—and the mastery which the nullifiers have acquired in gaining control in all the slave States, and bringing them to act as a unit against the North in the Federal

elections and legislation. His letter, and that of Mr. Clay, are cardinal to the history of these times, and cannot be overlooked, or discredited, by any one who seeks either to teach truth, or to learn it, on this eventful period of American history. They mark the origin of the slavery agitation. They show its locality, and fix it in the South: they show its pretext, and expose its want of truth: they point to its designs, and probable success—and in that they were prophetic. But this was not the only letter of Mr. Madison to this effect. The last three years of his life were occupied, and rendered miserable, by the progress which nullification, through an unfounded slavery alarm, was making in getting control of the State governments, with the undisguised object of a new Southern confederacy. All his letters of this period were filled with this subject. Many of these letters have been saved from loss by Mr. James C. M'Guire, of Washington City, and a quarto volume of them beautifully printed for presents to the friends of the great statesman—among them, several to his early and life-long friend, Governor Edward Coles, now of Philadelphia. In one of these, of date August, 1834, he says:—

"On the other hand, what more dangerous than nullification, or more evident than the progress it continues to make, either in its original shape, or in the disguises it assumes? And for its progress, hearken to the tone in which it is now preached. Cast your eye on its increasing minorities in most of the Southern States, without a decrease in any one of them. Look in Virginia herself, and read in the gazettes, and in the proceedings of popular meetings, the figure which the anarchical principle now makes, in contrast with the scouting reception given to it but a short time ago. A susceptibility of the contagion in the Southern States is visible; and the danger not to be concealed, that the sympathy arising from known causes, and the inculcated impression of a permanent incompatibility of interest between the North and the South, may put it in the power of popular leaders, aspiring to the highest stations, to unite the South, on some critical occasion, in a course that will end in creating a new theatre of great though inferior extent. In pursuing this course, the first and most obvious step, is nullification; the next, secession; and the last, a farewell separation."

This is enough to mark the origin, the authors, and the purposes of the present slavery agitation, and to expose the falsity

of the message in throwing all upon the North; but it is only the beginning of the public proof on that head. In the year 1835, Mr. Calhoun undertook to install the agitation in the Senate of the United States: the design was rebuked, and repulsed by Southern Senators—Mr. Bedford Brown, of North Carolina; Mr. John P. King, of Georgia. Foiled in 1835, he returned to the work in 1838, and was again rebuked by slave State Senators—Mr. Clay, Mr. Crittenden, Mr. Strange, of North Carolina; Mr. Richard H. Bayard, of Delaware; Mr. William Campbell Preston, of South Carolina; and by Mr. Buchanan, of Pennsylvania. He brought in a set of resolutions, five in number, intended to be a digest of territorial slavery law, all bottomed upon the right of Congress to legislate upon slavery in Territories, (for the dogma of no such power was not invented at that time, and he had not then forgot his support of the Missouri Compromise,) and deprecating the abuse of the right. In support of these resolutions Mr. Calhoun delivered many speeches, all tending to promote slavery agitation, and to excite the South against the North; for which he was rebuked by all the Senators named.*

But I am not now writing the history of the present slavery agitation—a history which the young have not learnt, and the old have forgotten, and which every American ought to understand. I only indicate cardinal points to show its character; and of these a main one remains to be stated. Up to Mr. Pierce's administration the plan had been defensive—that is to

---

* By some of them severely—by the mildest more temperately—but not less decisively; as this from Mr. Buchanan:—"*I cannot believe that the Senator from South Carolina (Mr. Calhoun) has taken the best course to attain these results (quieting agitation.) This is the great centre of agitation: from this Capitol it spreads over the whole Union. I, therefore, deprecate a protracted discussion of the question here. It can do no good, but may do much harm both in the North and in the South.*" Mr. Buchanan then added, that the Northern members who stood up for the rights of the South, and had to bear the brunt of the battle at home, were forced into false positions, and made to fight abolitionism on the right of petition, and placed between the fire of friends and foes—saying, "*Thus we stand: and those of us in the North who must sustain the brunt of the battle are forced into false positions. Abolitionism thus acquires force by bringing to its aid the right of petition, and the hostility which exists at the North against the doctrines of nullification. The fact is, and it cannot be disguised, that those of us in the Northern States who have determined to sustain the rights of the Southern States at every hazard, are placed in a most embarrassing situation. We are almost literally between two fires. While in front we are assailed by the abolitionists, our own friends in the South are constantly driving us into positions where their enemies, and our enemies, may gain important advantages.*"

say, to make the secession of the South a measure of self-defence against the abolition encroachments, aggressions, and crusades of the North: in the time of Mr. Pierce, the plan became offensive—that is to say, to commence the expansion of slavery, and the acquisition of territory to spread it over, so as to overpower the North with new slave States, and drive them out of the Union. In this change of tactics originated the abrogation of the Missouri Compromise, the attempt to purchase the one half of Mexico, and the actual purchase of a large part; the design to take Cuba; the encouragement to Kinney and to Walker in Central America; the quarrels with Great Britain for outlandish coasts and islands; the designs upon the Tehuantepec, the Nicaragua, the Panama, and the Darien routes; and the scheme to get a foothold in the Island of San Domingo. The rising in the free States in consequence of the abrogation of the Missouri Compromise, checked these schemes, and limited the success of the disunionists to the revival of the agitation which enables them to wield the South against the North in all the federal elections and federal legislation. Accidents and events have given this party a strange pre-eminence. Under Jackson's administration, proclaimed for treason; since, at the head of the Government and of the Democratic party. The death of Harrison, and the accession of Tyler, was their first great lift; the election of Mr. Pierce was their culminating point. It not only gave them the government, but power to pass themselves for the Union party, and for Democrats; and to stigmatize all who refused to go with them, as disunionists, and abolitionists. And to keep up this classification, is the object of the eleven pages of the message which calls for this Review—unhappily assisted in that object by the conduct of a few real abolitionists, (not five per centum of the population of the free States;) but made to stand, in the eyes of the South, for the whole.

IV.

ABROGATION OF THE MISSOURI COMPROMISE: ITS ULTERIOR OBJECTS.

Those who suppose that there was no object in view in this abrogation but merely to make Kansas a free State, are far behind the state of the facts, and can have had but little opportunity of knowing the intentions of the prime movers of that measure—those who ruled the council that commanded it. Certainly that was one of the objects; but there were others far beyond it, far transcending it in importance; and of which the establishment of Kansas as a slave State was only an introduction, and a means of attainment. To form the slave States into a unit for federal elections and legislation, by the revival of the slavery question, was one object, counting upon the federal patronage to gain as much help from the free States as would give the slave States the majority. Vast acquisitions of free territory to the southward, to be made slave (besides Cuba), was another object; and for this purpose the principles of the Kansas-Nebraska bill were doubly contrived; *first*, to carry slavery into these free Territories by the Constitution; *next*, to establish it by the inhabitants of the States, enough Southern people going in to dominate over the feeble and ignorant natives. Separation of the slave States, or domination over the free States, driving out of the Union the North Atlantic States, was to be the consequence of this consolidation of the slave States and vast acquisition of Southern territory. All these objects would have been brought out, on motions to amend the bill, if amendments and discussion had been allowed: as it was, they were only glanced at by a couple of speakers, and one of these enigmatically and gently, and the other more clearly, but stintedly in the few minutes which were allowed him, and which were in fact borrowed out of another member's time. Mr. Seward, of Georgia, was one; Mr. Benton, of Missouri, the other. Mr. Seward was thoroughly in favor of the repeal of the Missouri Compromise, but could not stomach the pretexts on which the repeal was founded, nor favor the ulterior objects of which it was the forerunner, nor respect a piece of legislation with a demagogical stump speech in its belly. He expressed himself gingerly, but strongly (considering his geographical

position and party relations) and clearly enough to be understood, and also to show more than party fealty permitted him to tell. He opposed the details of the bill, and showed wherein and why. First: "These details were not consistent with themselves, nor with the transactions to which they relate:" a mode of expression, to expose a double falsehood, sufficiently emphatic in a friend. Then: "That these details were manufactured for a particular purpose:" the word manufactured here being clearly equivalent to fabricated, and the purpose intended being sufficiently indicated as selfish and sinister, by the use of the word particular instead of public. Then: "Some of the clauses in it were introduced for the purpose of setting up a principle to be acted on in future, and which the acts of 1850 never contained"—a significant intimation of future operations, to be pretexted upon the acts of 1850, falsified for the purpose. Then again, he says: "We are called upon now to vote for this bill, which is not drafted in the ordinary shape of legislative acts." And well might Mr. Seward object to such a shape of drafting laws, for never was such a farrago of unlegislative and demagogue stuff put into any bill before. Mr. Seward then denied that the acts of 1850 authorized it, declaring that he would subscribe to no such thing; and offered to "join issue" upon it. Far from joining issue, all chance for it was cut off by the manner of dropping the House bill and driving the substitute bill through. Then Mr. Seward alluded to "a grand movement" which was in contemplation, professing not to know what it was, for, probably as disaffected to the bill, he was not let into the secret, but clearly showing that there was some "grand movement" on foot. Mr. Benton got a chance to say a few words, and interpreted that "grand movement" to be the seizure of Cuba, and the purchase of the northern half of Mexico. He got a chance to say a few words by a contrivance—a representative from Illinois, Mr. Knox, who had the floor for an hour, giving him some minutes of his time—for which he and the speaker were called to account, when it was seen what was said. The Congressional Globe shows this scene:—

FRIDAY, May 19, 1854: (*late in the evening.*)

Mr. KNOX was assigned the floor.

Mr. WRIGHT, of Pennsylvania. If the gentleman from Illinois will

give way for a moment, I will move that the committee take a recess until seven o'clock.

Mr. BENTON. If no gentleman wants the floor now, I wish to occupy it for about ten minutes.

The CHAIRMAN. The gentleman from Illinois (Mr. Knox) is entitled to the floor, the Chair having recognized him. If the gentleman from Illinois will yield the floor for ten minutes, and if the committee will be willing that the gentleman from Missouri (Mr. Benton) may proceed, he may do so.

The gentleman from Illinois yielded the floor, and general assent was given to the gentleman from Missouri to proceed.

Mr. BENTON said: Mr. Chairman, I have nothing more to say to this bill on account of its interference with the Missouri Compromise. On that point I have spoken my share, and shall not recur to it again. I pass on to a new point—one significantly revealed to us some ten days ago by a Representative from Georgia, the member from the first congressional district of that State, (Mr. Seward.) That gentleman spoke against the bill in a way entirely accordant to my own opinions; but came to the conclusion that he would vote for it,* and gave his reasons for doing so—reasons which had not been mentioned by any other speaker, and which struck me as momentous, and worthy to arrest the attention of the House, and of the country. He objects to the bill because it is unfounded and contradictory in its statements and assumptions—inconsistent with itself, with the act of 1820, and of the acts of 1850—because it was manufactured for a particular purpose, and is of no value in itself to the slave States; but which commands his support, as a Southern man, on account of its ulterior operations, as containing a principle to be asserted in future, and which was put into the bill to become the basis of some grand movement in this country. I will read what he said, as the proper way of doing justice to his clear and well-expressed opinions—to his momentous revelations—and as the best way of availing myself of his important declarations. I find them thus in the official copy of the speech:—

"I oppose the details of this bill, because they are not consistent with themselves or with the transactions to which they relate; and the bill itself shows that it was manufactured for a particular purpose. Some of the clauses embraced in it, conflicting as they are, were introduced for the purpose, in my opinion, of setting up a principle to be asserted in future, and which the acts of 1850 never contained. Now, sir, let us see. We are called upon here now to vote for this bill, which is not drafted in

* This was said before the vote was taken, when it was supposed that Mr. Seward, notwithstanding his objections, would vote with his party for the bill; but he did not. He did not vote at all, neither for nor against.

the ordinary shape of legislative acts. But the framers of this bill have furnished the reasons, within the bill itself, on which we must act, and which they call on us to subscribe to. What is it? They tell us that the law of 1820, being inconsistent with the legislation of 1850, therefore that the act of 1820 is inoperative and void. I take issue with them; and, for myself, occupying the position that I do as a Southern man, I never have subscribed, never will, and never can subscribe to the doctrines contained in the acts of 1850. My objections to the acts of 1850 are known at home. They are recorded in the proceedings of the convention which took place in Georgia in 1850. I was a member of that convention. I voted against the Georgia platform on principle. And now, when that portion of the South having feelings in common with me on this question, have waived their objections to it for the purpose of uniting with the South, and harmonizing public feeling on this great question, it is put in here as the basis of some grand movement in this country. I know not what that movement is."

I concur in the truth and justice of every thing which the member from Georgia has here said, but differ from him in the conclusion to which he arrives—that of voting for the bill; and find in his reasons for that vote, additional reasons for my own vote against it; but he votes as a Southern man, and votes sectionally. I also am a Southern man, but vote nationally on national questions. He sees in it a principle set up which is false and useless in its application to Nebraska, but which is to be asserted in future, and which is put into the bill as the basis of some grand impending movement in this country. Of the nature of this movement, which is to be so grand, and at the same time sectional, the member declares himself to be ignorant; and that ignorance, I would suppose, should be a reason for holding back from a bill which commits its supporters to great unknown things. That is the way it works with me. I also am ignorant, that is to say, uninformed of this grand movement which is to be in this country; but I believe in it, and so believing am the more against the bill. I am against any thing that I do not understand, and which nobody will explain to me, and which, according to my own short and dubious lights, is dangerous to the peace and honor of the country. I believe in the futility of this bill—its absolute futility to the slaveholding States—and that not a single slave will ever be held in Kansas or Nebraska under it, (even admitting it to be passed.) Though adapted to slave labor in two of its great staples, (hemp and tobacco,) I do not believe that slaves will ever be held there. The popular vote will expel them. Kansas is contiguous to middle and southern Missouri, where slave labor is profitable, and slaves held in great number—a single owner within two hours' ride of the line holding one hundred more than the five hundred of Randolph of Roanoke; and five thousand in his county alone; but the holder of slaves will have but one vote, and will be beat at the polls by

the many who have none. In relation to Kansas and Nebraska, then, I hold the bill to be a deception and a cheat—what gamesters call gammon, congressmen buncombe, and seamen a tub to the whale: that is to say, an ambidextrous operation upon the senses of confiding people, by which they are made to see what is not, and not to see what is. This is what I believe; and not being obliging enough to join in a scheme of self-deception, or to suffer a game of deception to be played upon me, I must now turn my back upon the illusions of this Nebraska bill, and look out for its real object—the particular purpose for which it was manufactured, and the grand movement of which it is to be the basis.

In this search I naturally look about into the signs and rumors of the times, and into the cotemporaneous events which may connect themselves with the grand movement in question; and think I find them in two diplomatic missions, of which the country has heard much—but not all. I speak upon rumor, but neither tell, nor believe, the half of the half of what I hear; but believe enough to excite apprehension, and to justify inquiry. What is a state secret in the city of Washington, is street talk in the city of Montezuma.

First. The mission of Mr. Gadsden to Santa Anna. It must have been conceived about the time that this bill was; and, according to transpiring accounts, must have been a grand movement in itself—$50,000,000 for as much Mexican territory on our southern border as would make five or six States of the first class. The area of the acquisition, as I understand it, was to extend from sea to sea, on a line that would give us Santander, Monterey, Saltillo, Parras, Sonora, and all Lower California. This was certainly a large movement, both in point of money and of territory, and also large in political consequence; and clearly furnishing a theatre for the doctrine of non-intervention, if there should be any design to convert the newly-acquired territory from free-soil, that it is, into slave soil that it might be desired to be. Here, then, I believe I have found one branch of the grand movement; and although Mr. Gadsden returned from his mission with a small slice only of the desired territory, yet he has returned to his post, and may have better luck on a second trial—if Santa Anna escapes from the speckled Indians (Los Indios Pintos) who have him at bay in the Sierra. I say nothing on the merits of this new acquisition, only that it is an old acquaintance with me, having first heard of it in November, 1846, and afterwards in March, 1848—at which latter time it was proposed in the Senate, (by Mr. Davis, of Mississippi,) on the ratification of the Guadalupe Hidalgo treaty; and rejected by the Senate. I voted against the Santander and Monterey line then, and have not seen cause to change

my opinion. [Here Mr. Benton read the article proposed by Mr. Davis for the new line.]

Secondly. The mission of Mr. Soulé to Madrid—also a grand movement in itself, if reports be true—two hundred and fifty millions for Cuba; and a rumpus kicked up if the island is not got. Here again might be found a case for the non-intervention principle; but of that I say nothing, because I know nothing, and wish to know something. Of the acquisition itself I say nothing now, but did say something, about forty-four years ago, in a Nashville newspaper, published by Thomas Eastin, called the *Impartial Review;* in which I discussed Cuba as the geographical appurtenance of the valley of the Mississippi, and eventually to become its political appurtenance; but to be got with honor whenever it was got; and in all that faith I still remain firm. No dishonor! no stain on the bright and spotless fame left us by our fathers!

Mr. Chairman, I discuss nothing in relation to those rumored acquisitions of the Island of Cuba and a broad side of Mexico; I only call attention to them as probable indexes to the grand movement of which the member from Georgia gave us the revelation, and which no one has denied. According to him, and according to my own belief, this Nebraska bill is only an entering-wedge to future enterprises—a thing manufactured for a particular purpose—a stepping-stone to a grand movement which is to develop itself in this country of ours. I wish to know what that movement is. I have a right to know, to enable me to discharge my duties understandingly; and I respectfully crave the information from those who have the conducting of the bill.

Mr. Smith, of Virginia.—I would like to know, Mr. Chairman, how much of this time consumed in the remarks of the gentleman from Missouri, is to be taken out of the hour allotted to the gentleman from Illinois?

The Chairman.—The gentleman from Missouri occupied twenty minutes. As a matter of course, that time must be taken out of the hour allowed to the gentleman from Illinois. It is distinctly understood that the Chair did not authorize the gentleman from Missouri to take the floor from the gentleman from Illinois.

Mr. Knox.—I am very happy in having yielded to the gentleman from Missouri so much of my time, because what he may have said is of far greater interest, and of far more importance to the country, than any poor remarks of mine would have been.

[This declaration was greeted with warm applause.]

This is the end of the reported proceedings, and not a word was said more on the ominous subject broached by Mr. Seward,

of Georgia, and pursued by me, (by the favor of Mr. Knox, of Illinois, in giving me part of his time,) for twenty minutes, for which he had to defend himself; and did it bravely and generously, commanding the applause of the House. There was spirit in the House, and if a few of us could have had a chance at the bill, it would have been smashed into atoms, and the country roused to a knowledge of the meditated crimes. But there was no chance. A vulgar, infuriate tyranny prevailed—greater than ever was seen in the French National Convention in the Reign of Terror; for even there, debate could not be entirely silenced. Members carried arms there; and brave men (but no braver than we were) with loaded pistols in their hands, would say what they pleased, and see Robespierre, Marat, Collot, Merlin, turn pale under their terrific denunciations. We could not carry arms into the national hall of legislation, and parliamentary rules signified nothing against an inexorable majority, some subdued by their fears, some seduced by the administration, some debauched by gambling, and drinking, and plunder legislation; and all driven along by the furious nullifiers, to whom the administration had surrendered the government. Still there was a plenty of good material, if it could have been worked up. Many voted with the majority, who only waited a favorable moment to attack the tyranny of which they were the unwilling and mortified instruments. The war upon the details of the bill would have furnished the opportunity. Successive attacks upon the details, even with the five minutes' speeches, would have been enough; for, in certain conditions of all public bodies —the inflamed and excited condition—long speeches are not wanted: they are even bad; and a sudden, vehement, and brief appeal to the passions has often sufficed to overturn a powerful majority, or even a whole government. But the fraudulent use of the rules, and the fatality of having all questions of order decided against us, left us without rights, or favors, in presence of an inexorable majority, which, governed by party machinery, drove on to their object regardless of law, decency, or shame.

A LAST WORD.

I was breaking down under the terrible attack which kept me, for two weeks, face to face with death, when I was writing this Examination; and had to break off abruptly—leaving two entire heads untouched, and not even alluded to. Besides these two heads, now postponed, there was another which I wished to bring before the American people, to wit: The conduct of an Administration and a Senate (called Democratic), which has done, and is doing, what no former administration and Senate, (whether Whig, Federal, Democratic, or Republican,) ever did! that is to say, suppressing and concealing the evidences of a foreign negotiation, after the negotiation is all over and done with; which negotiation is surrounded by circumstances which connect it with a scheme to bring on a separation of the slave from the free States: I speak of the Gadsden negotiation, and of the fifty millions he was authorized to give for a broad side of Mexico, with a port on the Gulf of California, and a railway to it, to suit the United States South after the separation—to which point all the schemes for a Southern Pacific Railroad tend, while the credulous public are made to believe they are hunting the best way to California, where they mean it shall never go, because California rejects slavery. Every Union-loving State Legislature should post its Senator under instructions to bring those hidden negotiations to the public view, though with but little prospect of getting the whole truth after so many years' suppression—the same reasons which have induced suppression thus far, being equally strong to make it perpetual; so that much may be gone past recovery.

Washington City, September, 1857.

A GRAND OPPORTUNITY

For the Merchant, Mechanic, Farmer, or Laboring Man

TO PROCURE A COMPLETE

Library of Universal Knowledge!

IN INSTALMENTS OF 25 CENTS AT A TIME.

THE PUBLISHERS,

Desiring that all classes of the community might have in their power the possibility of procuring the MOST VALUABLE WORK EVER OFFERED TO THE AMERICAN PUBLIC, which has been a long time in preparation, and will cost them, ere complete,

ONE HUNDRED AND TWENTY-FIVE THOUSAND DOLLARS,

HAVE RESOLVED TO ISSUE

THE NEW AMERICAN CYCLOPÆDIA,

IN WEEKLY NUMBERS,

At Twenty-five Cents each, containing 64 pages of closely printed matter.

AND IN

MONTHLY PARTS OF 256 PAGES, AT $1.

EVERY FOURTH WEEKLY PART, AND EACH MONTHLY PART,

WILL CONTAIN A

STEEL PLATE PORTRAIT.

The whole Work will be completed in 175 *Numbers, and make* 15 *Volumes, of* 750 *Pages each.*

PLAN OF THE

NEW AMERICAN CYCLOPÆDIA

OF GENERAL KNOWLEDGE.

EDITED BY

CHARLES A. DANA AND GEORGE RIPLEY,

AIDED BY A NUMEROUS SELECT CORPS OF WRITERS IN ALL BRANCHES OF SCIENCE, ART, AND LITERATURE.

THE design of the NEW AMERICAN CYCLOPÆDIA is to furnish the great body of intelligent readers in this country with a popular Dictionary of UNIVERSAL KNOWLEDGE.

All branches of scholastic erudition will be fully represented, and the scholar and professional man will find it stored with references in every sphere of learned inquiry. In the abstract sciences it will be no less trustworthy and valuable. Throughout its successive volumes the work will present a fund of accurate and copious information on Astronomy, Natural Philosophy, Mathematics, Mechanics, Engineering, the History and Description of Machines, Law, Political Economy, Grammar, Music, etc., etc.

The NATURAL SCIENCES will form a leading feature of the Cyclopædia, and will present a complete and accurate record of the great discoveries that have marked the progress of Chemistry, Geology, Botany, Mineralogy, etc., during the last fifty years.

Due space will be devoted to an exposition of the principles of PHYSIOLOGY, ANATOMY, and HYGIENE, which will be prepared in a manner adapted to popular information, by eminent writers of the medical profession.

In HISTORY it will give not merely a catalogue of barren dates, but a copious narrative, under their appropriate heads, of the principal events in the annals of the world.

In GEOGRAPHY and ETHNOLOGY it will embody all the remarkable results of original investigation which so brilliantly distinguish the present century.

In BIOGRAPHY it will not only record the lives of men eminent in the past, but will devote a large space to sketches of distinguished living persons, prepared

by writers, who from locality, personal acquaintance, or special research, are most competent to do them complete and unbiassed justice.

Agriculture, in all its branches, will have the most careful attention.

The Industrial Arts, and that Practical Science which has an immediate bearing on the necessities of daily life, such as Domestic Economy, Ventilation, the Heating of Houses, Food, etc., will be treated of with that thoroughness which their great importance demands.

It is intended that the work shall bear such a character of practical utility as to make it indispensable to the collection of books in every American household.

Abstaining from all doctrinal discussions, from all sectional and sectarian arguments, it will maintain the position of absolute impartiality on the great controverted questions which have divided opinions in every age.

The History of Religious Sects will be written, as far as possible, by distinguished members of the different sects respectively who have made their history and doctrines a special study.

As the New American Cyclopædia is intended to meet the intellectual wants of the American people, and in a certain degree to be the product and representative of American civilization, it is not founded on the model of any European work with a similar plan, but will, as far as the nature of a Cyclopædia permits, possess a strictly original character, although in the plan of its arrangement it will follow the alphabetical method of the popular *Conversations Lexicons*, which experience has amply shown to be the most convenient and useful.

It is the intention to issue the first number on or about the first of January next, and then continue the successive numbers from week to week until completed.

Orders may be addressed to us, or to any of our agents, for the above or either of the Subscription Works, and will meet prompt attention.

D. APPLETON & CO., 346 & 348 Broadway, N.Y.

J. B. FORD, 9 Appletons' Building, is our

PRINCIPAL AGENT for the NUMBER EDITION of this Work.

three wives living; and there is a lavish promiscuousness about the notions of all, male and female, on the subject of family relations; otherwise they are models of excellence, being kind mothers, children, and fathers. It is worthy of mention that this is the only profession open to women on equal terms with the stronger sex.

ACTS OF THE APOSTLES, the fifth book of the New Testament, written by Luke, a physician and painter of Antioch, who had been converted by St. Paul, whose friend and companion he afterwards was, and whom he accompanied to Rome, sharing his first captivity in that city. The Acts of the Apostles could not have been written before A. D. 62, at which time St. Paul was at Rome, and were probably written between that and the period of his death, A. D. 68. The personal acquaintance of the writer with the subject, especially with the life and experiences of St. Paul, must have given him every facility for the work. The Acts include the history of the church in Judea and Asia Minor during a period of about 30 years after the death of Christ. Theophilus (friend of God), mentioned in the dedication, has by some been considered an ideal for the inquiring heathen, by others a real person. The dates in the Acts have been assumed to be, martyrdom of Stephen, A. D. 35, Paul's conversion, A. D. 36, Paul's journey to Rome, A. D. 62 and 63. The style in which the Acts are written is perspicuous, the narrative striking. The principal personage is St. Paul; next to him St. Peter and Philip. The labors and trials of the other apostles, whose missions led them to distant countries, are but slightly adverted to.

ACTUARY, a word generally used to signify the manager of a joint stock company under a board of directors, particularly of an insurance company.

ACUÑA. I. CHRISTOVAL DE, Spanish Jesuit missionary in the 17th century. He was one of the early explorers of the river Amazon, and was sent in Texeira's expedition to that river, with the special object of reporting the incidents of the exploration. Father Andres de Artieda was appointed as his associate. The expedition lasted from February to December, 1639. Acuña went to Spain with his history of the expedition, but the distraction of the country prevented the government from taking any interest in the colonization of the country, on which so much energy and talent had been devoted. He returned to South America, and died on his journey from Panama to Lima. The narrative was published at Madrid, 1641, in 4to. II. PEDRO DE, Spanish governor of the Philippines and Moluccas, 16th century. He fought at the great battle of Lepanto in 1572, and in 1593 held the post of captain-general of the province of Carthagena, and resisted the attacks of the English. He drove the Dutch out of the Moluccas, and annexed them to Spain.

ACUPUNCTURE, a surgical operation employed among the Chinese and Japanese, in headaches, lethargies, convulsions, colics, &c. It is accomplished by piercing the part which is the seat of the malady with a silver needle. It has recently been adopted, in some cases, by British surgeons.

ACUTE DISEASES. An acute disease is on that is severe in character, rapid in its progress, and short in its duration. Chronic disease is the very opposite; it is less severe in character, slow in its progress, and of comparatively long duration. Measles, scarlet fever, small pox, cholera morbus, are acute diseases, which may be more or less severe in character, but always run their course in a short time; and even where they prove fatal, they are rapid in their progress, and of short duration; when neither fatal, nor complicated with other morbid symptoms, they are easily and promptly cured. Diseases are often distinguished by the words acute and chronic, but these terms are not sufficiently definite to form the basis of a general classification of diseases; for many affections are acute in the first instance, and not being cured in this stage of their progress, they abate somewhat in the severity of their symptoms, and assume, first, a subacute form, and then a lingering chronic state, which may continue for months and years, until the vitality of the patient is exhausted, unless medical advice be sought in time to conquer the disease, and renovate the system.—Diseases are more conveniently divided into "general and local," rather than "acute and chronic," the latter words being applicable to two different stages of the same disease, without regard to the periodicity of certain affections, which run their course in a few hours, days, or weeks. General diseases include those which affect the whole system at the same time; local diseases, those which affect mainly some particular tissue, organ, or function, and in which the general disturbance arising therefrom is only secondary.—General diseases are mostly connected with diseases of the blood, which being universally distributed, causes general disturbance, fever, and prostration to the whole organism. This may be caused either by the direct admission of some virus or miasmatic poison into the blood, or by disease of the nervous system, and consequent defective innervation in the organs, perturbation in their functions, and reaction on the blood by defective elaboration or secretion. Eruptive fevers, gout, and rheumatism, are the leading forms of general disease. Irritative fevers, miasmatic fevers, intermittent fevers, remittent or continued fevers, inflammatory remittent fevers, congestive or malignant fevers, hectic fevers, pernicious fevers, country fever, yellow fever, typhus fever, typhoid fever, relapsing fever, rubeola, scarlatina, variola or small pox, varioloid, varicella, or chicken pox, vaccina, erysipelas, gout, and rheumatism—some of these are acute diseases, others chronic, but all are general, and easily distinguished from local affections, though erysipelas and gout may seem to hold an ambiguous relation to both classes.—Local diseases are those which are

ABRIDGMENT OF THE DEBATES OF CONGRESS.

PUBLISHED BY D. APPLETON & CO., NEW YORK

OPINIONS OF THE PRESS.

New York Examiner.

"Mr Benton fully sustains his reputation for energy and industry. A careful examination of the second volume confirms the opinion which we have already expressed of the great importance of this truly national work."

New York Commercial.

"The Abridgment of the Debates of Congress, by Mr. Benton, are made with much care and excellent judgment. This work will form almost a complete history of the United States since the adoption of the federal constitution, and will be an invaluable work of reference."

New York Observer.

"No public library, and no private library of any pretensions, will be complete without the Debates of Congress."

New York Journal of Commerce.

"The value of this work cannot easily be overrated."

New York Herald.

"Had Col. Benton rendered no other service to the country than by the initiation of this undertaking, it would have preserved for him an honorable place in the recollection of future generations. It was of all others the work most wanted. It realizes a *desideratum* long felt, but which no one has had courage enough to attempt to supply."

New York Times.

"These Debates will contain the wisdom of Congress for seventy years, and form a history of the government from the time of its institution. The advantages which this abridgment offers will be appreciated by every one."

New York Independent.

"This work will bring to the attention of the present generation a multitude of things connected with the government which have long lain in forgetfulness."

New York Tribune.

"Our parliamentary history will now not only be reduced to a compass which will bring the work within the means of private individuals, but it will render it easy of consultation and reference."

New York Courier & Enquirer.

"This work will prove of immense value to public men, and to every American citizen who aims to know the civil history of his country."

Boston Evening Transcript.

"This abridgment will form one of the most valuable compendiums for private and public libraries ever issued. They will contain the history of the working of the government from its foundation—show what has been done and how it was done."

Boston Daily Advertiser.

"It is surprising to see how many of the subjects which are still before us were discussed by the fathers in the very infancy of the confederation. We shall welcome each successive volume of this work as a very valuable addition to the history of the country."

Boston Courier.

"Here is a work of unusual value, for without coming forward exactly in the form of history, it yet is a compendious history of our public affairs."

Boston Journal.

"Punctual to the time appointed, the second volume of this great work has made its appearance. Mr. Benton gives the spirit of these Debates, and the material seems well digested, and with impartiality. The indexing is very complete."

Boston Traveler.

"Col. Benton's qualifications for this task no one can dispute. His name upon the title page at once inspires confidence in its statements, and faith in its impartiality and entire faithfulness."

Boston Post.

"An enterprise like this, so interesting, invaluable, and national, deserves the most ample encouragement. The author says in his preface that the work will be to him a labor of love and of pride, resuscitating the patriotic dead—no one skipped, and each in his place, with the best of his works in hand."

Boston Atlas.

"The parliamentary history of the United States will be in these volumes made accessible."

Philadelphia North American.

"In this work the *people* will have, for the first time, an opportunity to become acquainted with the manner and spirit in which public affairs were discussed in the early stages of the government. This abridgment or 'annals,' will be an invaluable part of the history of the country."

Philadelphia Pennsylvanian.

"We are glad that Mr. Benton has devoted himself to this important undertaking. The task could not have been confided to abler hands. The work is of national interest and importance."

Philadelphia Inquirer.

"All the important debates will be given, and every act and resolution that possesses the slightest interest."

Philadelphia Ledger.

"The great merit of this work is, that while it is condensed within a compass which enables every reader to find time master them, every argument which tends to throw light upon the question discussed is given clearly and intelligibly."

Rochester Democrat.

"For the future of the country—for the information of politicians, and of legislators and others now in public service—for the instruction of posterity in the principles of our government, and the rights and duties of its citizens—for permanent and perpetual use in all that relates to politics and statesmanship—there is nothing so much required as the debates of a national legislature by a competent hand, and this the country has now the assurance of from the hand of Col. Benton."

Rochester Union.

"It is in itself an invaluable history of our country, as well as a contemporaneous exposition of the theory of our government and our varied institutions, proceeding from our ablest statesman."

Buffalo Advertiser.

"The theory of our institutions, the nature and working of the various parts, can be correctly understood by those who will be at the trouble to study; and the sources of this information will be, in these Debates, within the reach of every citizen. The indexes at the end of each volume render it easy to turn to any particular subject."

Buffalo Courier.

"We regard the extensive circulation of this work as a matter of national importance, in that it will instruct men in what has been the principles and policy of contending parties, and which has been the controlling ones."

Madison Daily Argus.

"Its wide range of characters—each one speaking for himself and representing his own party—and its far stretch of time, make it of the greatest value to the nation."

Chicago Daily Democrat.

"Col. Benton has condensed the Debates included in this volume into a form at once convenient and intelligible, and is vigorously at work preparing the succeeding volumes. The work will be at least one of the monuments which he will himself erect that will bear his memory through coming time."

Cincinnati Daily Commercial.

"For the statesman, politician, historian, and brief chronicler of the times, this work will be of almost incalculable value."

OPINIONS OF THE PRESS.

Cincinnati Commercial.

"This work is to contain the history of the working of our government, preserve and hand down to posterity the wisdom of ages, and shed light upon the study of all impending questions—for there will not be a question of the day which will not be illustrated by something in said debates."

Columbus State Journal.

"We are willing to trust the Old Statesman, and we wish him God speed in his undertaking."

Mobile Advertiser.

"With all his faults, no man now living is so well adapted to the compilation of the Debates of Congress as Mr. Benton."

Montgomery Advertiser.

"It commends itself to the favor of all Americans. The work is most important. It will place within the reach of thousands otherwise inaccessible treasures of historic knowledge."

Commercial Bulletin, New Orleans.

"This abridgment, considering the inestimable value of the Debates, as a complete political history of the country, forms a treasury of knowledge which should be possessed by every citizen who can afford it—and there are few who are not able, coming out as it will, serially."

Daily Picayune, New Orleans.

"This abridgment is *not* to be restricted to the speeches of celebrated orators, but will extend to the *business men*, and to the plainest speakers who spoke, so as to give information on subjects of surviving interest."

Memphis Weekly Appeal.

"The compilation of the Debates of Congress is a labor which requires immense research, untiring energy, strong memory, and a tolerable knowledge of great principles—and in this work Col. Benton has at length found his true occupation. The reader will get the gist of the debates—and there are many questions upon which the early patriots seemed to throw a clearer and steadier light than the politicians of the present day are able to do."

N. Y. Correspondent Charleston News.

"Col. Benton will reduce the *pile* of huge, unhandy volumes of the legislative history of the country into a convenient form, excluding all the chaff and retaining all the grain."

Troy Whig.

"An American statesman, seeking a profund knowledge of the nature and operations of our government, cannot well do without them."

Christian Mirror, Portland.

"The brain and nerve to accomplish the herculean labor of bringing seventy years of congressional debates into fifteen volumes will insure a reward more desirable than gold."

Portland Argus.

"Another valuable feature of this work is that the discussions are so arranged as to render them readable. One can sit down at his leisure, and read the book through, as he would an interesting history. And a marvellous history it is These pages are the recording and everlasting evidence that 'man is capable of self government,' and will go farther to solve that great problem than a thousand theories."

National Intelligencer, Washington.

"By these Debates we find the first business introduced into the House of Representatives. After the inauguration was a bill to collect 'Duties on Imports,' and a curious and interesting feature of the debate was, that every speaker seemed to regard the protection of home industry as one of the objects to be embraced as a matter of course in any project for raising the revenue. We shall probably receive the assent of every reader in saying, that no living person combines more of the qualities necessary for the proper execution of this work than the veteran ex-senator who has undertaken it."

Albany Statesman.

"It will be found in the retrospect of the Presidency of Washington, moderate expenses and moderate taxation marked the era. During the space of that eight years most important measures matured, so that it may truly be called 'the age of gold' in the history of the United States."

Albany Argus.

"The compiler, while he retains the substance of all the debates of the slightest interest, will exclude all unimportant matter. These volumes should be in every public library and every young man should have a copy"
